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THE CASE

OF

GREAT BRITAIN

AS LAID BEFORE THE

TRIBUNAL OF ARBITRATION,

CONVENED AT GENEVA

UNDER

THE PROVISIONS OF THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND HER MAJESTY THE QUEEN OF GREAT BRITAIN, CONCLUDED AT WASHINGTON, MAY 8, 1871.

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IN THREE VOLUMES.

VOLUME III.

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EXPLANATORY NOTE.

The figures in brackets in the text indicate the pages of the edition which was laid before the Tribunal of Arbitration at Geneva; the * indicates the word with which each page commences.

The references to pages in the foot-notes refer to the pages in the edition laid before the Tribunal of Arbitration at Geneva, which may be found in this edition by referring to the figures in brackets in the text.

In the table of contents the column of figures under the head of "Geneva edition" refers to the edition which was laid before the Tribunal of Arbitration at Geneva, and the column under the head of "Second edition" refers to this edition.

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CORRESPONDENCE RESPECTING THE COMMENCEMENT OF THE CIVIL WAR IN THE UNITED STATES.

No. 1.

Mr. Seward to Mr. Dallas.—(Communicated to Lord J. Russell by Mr. Dallas, April 8.)

DEPARTMENT OF STATE,
Washington, March 9, 1861.

SIR: My predecessor, in his dispatch addressed to you on the 28th of February last, instructed you to use all proper and necessary measures to prevent the success of efforts which may be made by persons claiming to represent those States of this Union in whose name a provisional government has been announced, to procure a recognition of their independence by the empire of Great Britain.

I am now instructed by the President of the United States to inform you that, having assumed the administration of the Government, in pursuance of an unquestioned election, and of the directions of the Constitution, he renews the injunction which I have mentioned, and relies upon the exercise of the greatest possible diligence and fidelity on your part to counteract and prevent the designs of those who would invoke foreign intervention to embarrass or overthrow the republic.

When you reflect on the novelty of such designs, their unpatriotic and revolutionary character, and the long train of evils which must follow, directly or consequently, from even their partial or temporary success, the President feels assured that you will justly appreciate and cordially approve the caution which prompts this communication.

I transmit herewith a copy of the address pronounced by the President on taking the constitutional oath of office. It sets forth clearly the errors of the misguided partisans who are seeking to dismember the Union, the grounds on which the conduct of those partisans is disallowed, and also the general policy which the Government will pursue with a view to the preservation of domestic peace and order, and the maintenance and preservation of the Federal Union.

You will lose no time in submitting this address to the British minister for foreign affairs, and in assuring him that the President of the United States entertains a full confidence in the speedy restoration of the harmony and unity of the Government, by a firm yet just and liberal bearing, co-operating with the deliberate and loyal action of the American people.

You will truthfully urge upon the government of Great Britain the consideration that the present disturbances have had their origin only in popular passions, excited under novel circumstances of very transient character, and that while not one person of well-balanced mind has attempted to show that dismemberment of the Union would be permanently conducive to the safety and welfare of even his own State or section, much less of all the States and sections of our country, the people themselves still retain and cherish a profound confidence in our

happy Constitution, together with a veneration and affection for it, such as no other form of government ever received at the hands of those for whom it was established.

We feel free to assume that it is the general conviction of men, not only here but in all other countries, that the Federal Union affords a better system than any other that could be contrived to assure the safety, the peace, the prosperity, the welfare, and the happiness of all the States of which it is composed.

The position of these States, and their mining, agricultural, manufacturing, commercial, political, and social relations and influences seem to make it permanently the interest of all other nations that our present political system shall be unchanged and undisturbed. Any advantage that any foreign nation might derive from a connection that it might form with any dissatisfied or discontented portion, State, or section, even if not altogether illusory, would be ephemeral, and would be overbalanced by the evils it would suffer from a disseverance of the whole Union, whose manifest policy it must be hereafter, as it has always been heretofore, to maintain peace, liberal commerce, and cordial amity with all other nations, and to favor the establishment of well-ordered government all over the whole American Continent.

Nor do we think we exaggerate our national importance when we claim that any political disaster that should befall us, and introduce discord or anarchy among the States that have so long constituted one great, pacific, prosperous nation, under a form of government which has approved itself to the respect and confidence of mankind, might tend by its influence to disturb and unsettle the existing systems of government in other parts of the world, and arrest that progress of improvement and civilization which marks the era in which we live.

The United States have had too many assurances and manifestations of the friendship and good-will of Great Britain to entertain any doubt that these considerations, and such others as your own large experience of the working of our Federal system will suggest, will have their just influence with the British government, and will prevent that government from yielding to solicitations to intervene, in any unfriendly way, in the domestic concerns of our country.

[2] *The President regrets that the events going on here may be productive of some possible inconvenience to the people and subjects of Her Britannic Majesty, but he is determined that those inconveniences shall be made as light and as transient as possible; and, so far as it may rest with him, that all strangers who may suffer any injury from them shall be amply indemnified.

The President expects that you will be prompt in transmitting to this Department any information you may receive on the subject of the attempts which have suggested this communication.

I am, &c.,

(Signed) WILLIAM H. SEWARD.

No. 2.

Lord J. Russell to Lord Lyons.

FOREIGN OFFICE, *April* 12, 1861.

MY LORD: Mr. Dallas called upon me on the 8th instant, in pursuance of an appointment, and communicated to me a dispatch which he

had received from Mr. Seward, United States Secretary of State, and of which I inclose a copy.[1]

There are several passages in this dispatch at which I might have taken exception, but I thought it best not to raise unnecessary questions; I therefore confined myself to the following observations:

I said that it was not the wish or intention of Her Majesty's government to pronounce any judgment on the causes which had induced seven of the United States to secede from the rest; whether, as to the past, those States had reason to complain that the terms of the compact of Union had not been observed, or whether they had reason to apprehend that, for the future, justice would not be done to them, were questions which Her Majesty's government did not pretend to decide. They had seen in the United States a free and prosperous community, with which they had been happy to maintain the most amicable relations.

Now that a secession had taken place, they were in no hurry to recognize the separation as complete and final. But, on the other hand, I could not bind Her Majesty's government, nor tell how and when circumstances might arise which would make a decision necessary. That I must, therefore, decline to enter into any further discussion at the present moment, and could only assure him of our regret at the events which had recently occurred.

I am, &c.,
(Signed) J. RUSSELL.

No. 3.

Lord Lyons to Lord J. Russell.

[Extract.]

WASHINGTON, *April* 15, 1861. (Received April 30.)

On the 8th instant a messenger from this Government informed the governor of South Carolina and the military commandant at Charleston, that President Lincoln had determined to supply Fort Sumter with provisions, peaceably if possible, forcibly if necessary.

On the 11th instant the military commandant, in obedience to orders from Montgomery, from the government of the southern confederacy, summoned Fort Sumter to surrender.

On the 12th instant, at half past 4 o'clock in the morning, the batteries prepared by the troops of the Confederate States opened their fire on the fort.

The day before yesterday Fort Sumter was surrendered unconditionally.

At Washington, the day before yesterday, President Lincoln, in answer to questions from commissioners sent by the legislature of Virginia, gave an authoritative interpretation of his inaugural address, leaving no doubt that he had resolved to adopt coercive measures against the South.

This morning the President has issued a proclamation,[2] calling out 75,000 men of the militia, and summoning a special session of Congress for the 4th of July, the anniversary of the Declaration of Independence.

[1] No. 1.

[2] Whereas the laws of the United States have been for some time past, and now are, opposed, and the execution thereof obstructed, in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, by combinations too power-

[3] *Civil war is now imminent, or rather has already begun. Had Mr. Lincoln adhered to his determination to evacuate Fort Sumter, hostilities might undoubtedly have been deferred for some time longer. A prudent policy consistently pursued might have led to a peaceful separation, possibly even to a peaceful reconstruction of the Union. Mr. Lincoln, however, has decided upon war, and has carried his cabinet with him.

An expedition was prepared in the utmost haste at New York. Upon being informed of the intentions of this Government, the forces of the southern confederacy immediately summoned the fort, and after a bombardment of less than forty hours took it.

No more certain intelligence than the telegraphic dispatches to the newspapers have yet been received here from Charleston. The most extraordinary statement which they contain is, that no one was killed on either side during the bombardment. The ships forming the expedition from New York appear to have been off Charleston Harbor, but to have taken no part in the contest. The tempestuous state of the weather is supposed to have rendered their approach impracticable.

The loss of Fort Sumter is not of itself of much importance, in a military point of view, to this Government. As the beginning of civil war, it is a most serious and a most unhappy event. It seems calculated to arouse feelings of resentment and humiliation in the North, which will overwhelm the party of peace, and throw the people with bitter eagerness into the war.

The immediate apprehensions of the Government are for this city. The chiefs of the southern confederacy loudly declare their intention of attacking it immediately, if the border States join them. This Government, previously to the issue of the proclamation this morning, were already making arrangements with the governors of Northern States to obtain volunteers and militia to defend it.

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full to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by law: Now, therefore, I, Abraham Lincoln, President of the United States, in virtue of the power in me vested by the Constitution and the laws, have thought fit to call forth the militia of the several States of the Union to the aggregate number of 75,000, in order to suppress said combination and to cause the laws to be duly executed.

The details for this object will be immediately communicated to the State authorities through the War Department. I appeal to all loyal citizens to favor, facilitate, and aid this effort to maintain the honor, the integrity, and existence of our national Union and the perpetuity of popular government, and to redress wrongs already long enough endured. I deem it proper to say that the first service assigned to the forces hereby called forth will probably be to repossess the forts, places, and property which have been seized from the Union; and in every event the utmost care will be observed, consistently with the objects aforesaid, to avoid any devastation, any destruction of or interference with property, or any disturbance of peaceful citizens of any part of the country; and I hereby comand the persons composing the combinations aforesaid to disperse and retire peaceably to their respective abodes within twenty days from this date.

Deeming that the present condition of public affairs presents an extraordinary occasion, I do hereby, in virtue of the power in me vested by the Constitution, convene both Houses of Congress. The Senators and Representatives are, therefore, summoned to assemble at their respective chambers at 12 o'clock, noon, on Thursday, the 4th day of July next, then and there to consider and determine such measures as, in their wisdom, the public safety and interest may seem to demand.

In witness whereof I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington, this 15th day of April, in the year of our Lord one thousand eight hundred and sixty-one, and of the Independence of the United States the eighty-fifth.

(Signed) ABRAHAM LINCOLN.

By the President:

(Signed) WILLIAM H. SEWARD,
Secretary of State.

Probably the best remaining chance of avoiding a fierce war lies in the Government's being able to assemble in time so large a force for the defense of Washington as to deter the South from attacking it. The Confederate States are, however, at this moment believed to be better prepared to attack the city than the Government is to provide in time for its defense.

Mr. Lincoln's plans, as stated in his answer to the Virginia commissioners, appear to be devised for the purpose of avoiding, if possible, military operations, except on the coast. He says: "I shall not attempt to collect the duties and imposts by any armed invasion of any part of the country—not meaning by this, however, that I may not land a force deemed necessary to relieve a fort upon the border of the country." He says nothing of his intentions with respect to blockading southern ports, or collecting customs duties by means of United States vessels off the harbors. That measures of this kind are in contemplation is, I fear, hardly to be doubted. For the collection of duties on board ships the sanction of Congress is said to be legally necessary, as it undoubtedly is for a blockade, if the establishment of one be regarded as equivalent to war. But means can, no doubt, be found to bring either measure within the terms of the Constitution or the law, if it be desired to do so.

In his answer to the commissioners Mr. Lincoln threatens to cut off postal communication with the seceded States. In his proclamation he announces that "the first service assigned to the forces thereby called out will probably be to repossess the forts, places, and property which have been seized from the Union."

In the approaching contest the North has the superiority in numbers and in wealth, and the immense advantage of possessing, and of being able to maintain, a navy. It has also an organized, though small, regular army; but the advantage of this will be in a great measure neutralized by the retirement of the southern officers. The South is—if the accounts which reach us are to be trusted—more unanimous; it is more eager, and, as it has more at stake, is more ready to make sacrifices. The taint of slavery will render the cause of the South repugnant to the feelings of the civilized world. On the other hand, commercial intercourse with the cotton States is of vital importance to manufacturing nations.

The conduct of Virginia and the other border States is now, more than ever, the critical question. If they remain true to the Union, the contest may be confined to small dimensions. Unless, however, they abandon their solemn declarations, they must now make common cause with the South. The telegraph may perhaps convey some important information from these States to the New York newspapers before the departure of the packet which will convey this dispatch to your lordship.

I understand that measures have been taken to bring the United States men-of-war home from foreign stations as soon as possible. The greatest activity is shown in enlisting sailors and in fitting out ships in the United States navy-yards.

A telegraphic dispatch to the newspapers announces, I know not how truly, that the relief of Fort Pickens, in Florida, has been effected by the vessels sent some time ago by this government for the purpose.

No. 4.

Lord J. Russell to the lords commissioners of the admiralty.

FOREIGN OFFICE, *May* 1, 1861.

MY LORDS: The intelligence which reached this country by the last mail from the United States gives reason to suppose that a civil war between the Northern and Southern States of the confederacy was imminent, if indeed it might not be considered to have already begun.

Simultaneously with the arrival of this news, a telegram, purporting to have been conveyed to Halifax from the United States, was received, which announced that the president of the southern confederacy had taken steps for issuing letters of marque against the vessels of the Northern States.

If such is really the case, it is obvious that much inconvenience may be occasioned to the numerous British vessels engaged in trade on the coast of the United States and in the Gulf of Mexico, and that timely provision should be made for their protection against undue molestation by reason of the maritime operations of the hostile parties:

[4] and Her Majesty has accordingly commanded me to *signify to your lordships her pleasure that adequate re-enforcements should forthwith be sent to Her Majesty's squadron on the North America and West Indian station, so that the admiral in command may be able duly to provide for the protection of British shipping in any emergency that may occur.

I need scarcely observe to your lordships that it may be right to apprise the admiral that, much as Her Majesty regrets the prospect of civil war breaking out in a country in the happiness and peace of which Her Majesty takes the deepest interest, it is Her Majesty's pleasure that nothing should be done by her naval forces which should indicate any partiality or preference for either party in the contest that may ensue.

I am, &c.,
(Signed) J. RUSSELL.

No. 5.

Consul Archibald to Lord J. Russell.

NEW YORK, *April* 23, 1861. (Received May 5.)

MY LORD: I have the honor to transmit, herewith inclosed, for your lordship's information, two copies of a proclamation issued by the President of the United States, establishing a blockade of the ports in the seceded States.

I beg leave also to acquaint your lordship that the collector of this port has been ordered by the Federal Government not to grant clearances to any vessels whatever intending to proceed to ports in the seceded States.

I likewise transmit to your lordship two copies of a proclamation by the president of the Confederate States, inviting applications for letters of marque and reprisal against the vessels and commerce of the United States.

I have, &c.,
(Signed) E. M. ARCHIBALD.

[Inclosure 1 in No. 5.]

Proclamation by President Lincoln.

The President has issued a proclamation, stating that an insurrection against the Government of the United States has broken out in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas; and the laws of the United States for the collection of the revenue cannot be effectually executed therein conformably to that provision of the Constitution which requires duties to be uniform throughout the United States; and further, a combination of persons engaged in such insurrection have threatened to grant pretended letters of marque to authorize the bearers thereof to commit assaults on the lives, vessels, and property of good citizens of the country, lawfully engaged in commerce on the high seas and in the waters of the United States; and whereas, the President says an executive proclamation has already been issued requiring the persons engaged in these disorderly proceedings to desist, therefore calling out a militia force for the purpose of repressing the same, and convening Congress, in extraordinary session, to deliberate and determine thereon. The President, with a view to the same purposes before mentioned, and to the protection of the public peace, and the lives and property of its orderly citizens, pursuing their lawful occupations, until Congress shall have assembled and deliberated on the said unlawful proceedings, or until the same shall have ceased, has further deemed it advisable to set on foot a blockade of the ports within the States aforesaid, in pursuance of the laws of the United States and the law of nations in such cases provided. For this purpose a competent force will be posted so as to prevent the entrance and exit of vessels from the ports aforesaid. If, therefore, with a view to violate such blockade a vessel shall attempt to leave any of the said ports, she will be duly warned by the commander of one of the said blockading vessels, who will indorse on her register the fact and date of such warning; and if the same vessel shall again attempt to enter or leave the blockaded port she will be captured and sent to the nearest convenient port for such proceedings against her and her cargo as may be deemed advisable.

[Inclosure 2 in No. 5.]

Proclamation by President Davis.

Whereas Abraham Lincoln, President of the United States, has, by proclamation, announced intention of invading the confederacy with an armed force, for the purpose of capturing its fortresses, and thereby subverting its independence and subjecting the free people thereof to the dominion of a foreign power, and whereas it has thus become the duty of this government to repel the threatened invasion, and defend the rights and liberties of the people by all the means which the laws of nations and usages of civilized warfare place at its disposal:

Now, therefore, I, Jefferson Davis, president of the Confederate States of America, do issue this, my proclamation, inviting all those who may desire, by service in private armed vessels on the high seas, to aid this government in resisting so wanton and wicked an aggression, to make application for commissions or letters of
[5] marque and reprisal, to be issued under the seal of these Confederate States; and I do further notify all persons applying for letters of marque to make a statement in writing, giving the name and suitable description of the character, tonnage, and force of the vessel, name of the place of residence of each owner concerned therein and the intended number of crew, and to sign each statement, and deliver the same to the secretary of state or collector of the port of entry of these Confederate States, to be by him transmitted to the secretary of state, and do further notify all applicants aforesaid, before any commission or letter of marque is issued to any vessel, or the owner or the owners thereof, and the commander for the time being, they will be required to give bond to the Confederate States, with at least two responsible sureties not interested in such vessel, in the penal sum of $5,000; or if such vessel be provided with more than 150 men, then in the penal sum of $10,000, with the condition that the owners, officers, and crew who shall be employed on board such commissioned vessel shall observe the laws of these Confederate States, and the instructions given them for the regulation of their conduct, and shall satisfy all damages done contrary to the tenor thereof by such vessel during her commission, and deliver up the same when revoked by the president of the Confederate States. And I do further specially enjoin on all persons holding offices, civil and military, under the authority of the Confederate States, that they be vigilant and zealous in the discharge of the duties incident thereto: and I do, moreover, exhort the good people of these Confederate States, as they love their country—as they prize the blessings of free government—as they feel the wrongs of the

past, and these now threatened in an aggravated form by those whose enmity is more implacable because unprovoked—they exert themselves in preserving order, in promoting concord, in maintaining the authority and efficacy of the laws, and in supporting, invigorating all the measures which may be adopted for a common defense, and by which, under the blessings of Divine Providence, we may hope for a speedy, just, and honorable peace.

In witness whereof I have set my hand, and have caused the seal of the Confederate States of America to be attached, this 17th day of April, in the year of our Lord 1861.

(Signed) JEFFERSON DAVIS.

(Signed) ROBERT TOOMBS,
Secretary of State.

No. 6.

Lord Lyons to Lord J. Russell.

[Extract.]

WASHINGTON *April* 22, 1861. (Received May 10.)

The progress of events in this country appears to tend, with fatal rapidity, toward a fierce civil war.

I have had the honor to transmit to your lordship a proclamation issued by the President of the United States for calling out 75,000 men of the militia, and summoning a session of Congress.

To this the president of the southern confederacy replied, on the 17th instant, by a proclamation inviting those who might desire to aid his government by service in private armed vessels at sea, to apply for letters of marque.

The President of the United States rejoined, by a proclamation dated the 19th instant, announcing a blockade of the southern ports, and declaring in effect, that privateers, with letters of marque from the southern confederacy, will be treated as pirates.

The governors of the border States answered the call of the President of the United States for troops by prompt and positive refusals, couched, in several instances, in very strong language.

In the North, however, the call has been responded to with enthusiasm; and the Government would, at this moment, have no difficulty in obtaining thence any number of men for which it might ask.

The troops are at present wanted chiefly for the defense of Washington, an attack on which from the South is seriously apprehended. Such an attack, if made immediately and with vigor, would, in the opinion of many people, be successful. Unless, however, the town be taken in a few days, by a sudden *coup de main*, it seems difficult to suppose that the Government will not be able to provide means for its defense at least equal to those which the southern confederacy possesses for attacking it.

Some of the militia from the North have already arrived, and the number would be greater had not a conflict which occurred in the streets of Baltimore, on the 19th instant, led to a refusal on the part of the inhabitants to allow troops from the North to pass through the town, and to the destruction of some of the bridges on the railways by which it is connected with the North.

One of the first results of the announcement of coercive measures on the part of the Government here has been the passing, by the convention of Virginia, of an ordinance of secession. It is true that, in conformity with the terms on which the convention was elected, the ordi-

nance must be ratified by the people of the State before it becomes definitely valid, but in the mean time the secession appears, in fact, to have taken place. Virginia has not, however, so far as is known here, formally joined the southern confederation.

In consequence of the secession of Virginia, and of the predominance at this moment of the disunion party in Maryland, the little District in which this capital is situated is entirely surrounded by hostile territory. Correspondence with the North, both by mail and telegraph, has been interrupted for the last two days. Troops, however, can be brought up the Potomac, and if the spirit roused at the North be at all what it is represented to be, it must soon be in the power of the Government to reopen the communication through Maryland.

One of the rumors rife here is that troops are passing from Virginia into Maryland, and that the first battle between the two sections of the country will take place near Baltimore.

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[6] *No. 7.

Lord Lyons to Lord J. Russell.

[Extract.]

WASHINGTON, *April* 22, 1861. (Received May 10.)

I have the honor to inclose copies of a proclamation of the president of the southern confederacy, inviting application for letters of marque, and also a proclamation of the President of the United States declaring the southern privateers will be treated as pirates, and announcing a blockade of the Southern ports.

I lost no time in taking measures to communicate the contents of these proclamations as fast as possible, both by telegraph and post, to Rear-Admiral Sir Alexander Milne. The subsequent interruption of communication with the North has prevented my learning how far my measures were successful.

I am informed that an official notification of the blockade will be sent to the foreign legations here in the course of the day.

Under ordinary circumstances the season during which British vessels frequent southern ports closes in May and does not reopen until October.

I understand that some alarm is felt in the North respecting the southern privateers, but it must be supposed that the Navy of the United States will suffice to arrest their operations. If these privateers, however, make any head in the Gulf of Mexico, it may perhaps be advisable that a British squadron should be sent there to insure the safety of British merchant-vessels.

[Inclosure 1 in No. 7.]

Proclamation by the president of the Confederate States of America.

Whereas Abraham Lincoln, President of the United States, has by proclamation announced the intention of invading the confederacy with an armed force, for the purpose of capturing its fortresses, and thereby subverting its independence, and subjecting the free people thereof to the dominion of a foreign power; and whereas it has thus become the duty of this government to repel the threatened invasion, and defend the

rights and liberties of the people by all the means which the laws of nations and the usages of civilized place at its disposal:

Now, therefore, I Jefferson Davis, president of the Confederate States of America, do issue this my proclamation, inviting all those who may desire by service in private armed vessels on the high seas to aid this government in resisting so wanton and wicked an aggression, to make application for commissions or letters of marque and reprisal, to be issued under the seal of these Confederate States; and I do further notify all persons applying for letters of marque, to make a statement in writing, giving the name and suitable description of the character, tonnage, and force of the vessel, name of the place of residence of each owner concerned therein, and the intended number of crew, and to sign such statement, and deliver the same to the secretary of state or collector of the port of entry of these Confederate States, to be by him transmitted to the secretary of state; and I do further notify all applicants aforesaid, before any commission or letter of marque is issued to any vessel or the owner or the owners thereof, and the commander for the time being, they will be required to give bond to the Confederate States, with at least two responsible sureties not interested in such vessel, in the sum of five thousand dollars, or if such vessel be provided with more than one hundred and fifty men, then in the penal sum of ten thousand dollars, with the condition that the owners, officers, and crew who shall be employed on board such commissioned vessel shall observe the laws of these Confederate States and the instructions given them for the regulation of their conduct, that shall satisfy all damages done contrary to the tenor thereof by such vessel during her commission, and deliver up the same when revoked by the president of the Confederate States; and I do further specially enjoin on all persons holding offices, civil and military, under the authority of the Confederate States, that they be vigilant and zealous in the discharge of the duties incidental thereto; and I do, moreover, exhort the good people of these Confederate States, as they love their country, as they prize the blessings of free government, as they feel the wrongs of the past, and those now threatened in an aggravated form by those whose enmity is more implacable because unprovoked, they exert themselves in preserving order, in promoting concord, in maintaining the authority and efficacy of the laws, and in supporting, invigorating all the measures which may be adopted for a common defense, and by which, under the blessing of Divine Providence, we may hope for a speedy, just, and honorable peace.

In witness whereof I have set my hand and have caused the seal of the Confederate States of America to be attached this seventeenth day of April, in the year of our Lord one thousand eight hundred and sixty-one.

(Signed) JEFFERSON DAVIS.

(Signed) ROBERT TOOMBS,
Secretary of State.

[Inclosure 2 in No. 7.

Proclamation by the President of the United States.

Whereas an insurrection against the Government of the United States has broken out in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, and the laws of the United States for the collection of the
[7] revenue cannot be effectually executed therein conformably to that provision of the Constitution which requires duties to be uniform throughout the United States;

And whereas a combination of persons, engaged in such insurrection, have threatened to grant pretended letters of marque to authorize the bearers thereof to commit assaults on the lives, vessels, and property of good citizens of the country lawfully engaged in commerce on the high seas, and in waters of the United States;

And whereas an executive proclamation has been already issued, requiring the persons engaged in these disorderly proceedings to desist therefrom, calling out a militia force for the purpose of repressing the same, and convening Congress, in extraordinary session, to deliberate and determine thereon:

Now, therefore, I, Abraham Lincoln, President of the United States, with a view to the same purposes before mentioned, and to the protection of the public peace, and the lives and property of quiet and orderly citizens pursuing their lawful occupations, until Congress shall have assembled and deliberated on the said unlawful proceedings, or until the same shall have ceased, have further deemed it advisable to set on foot a blockade of the ports within the States aforesaid, in pursuance of the laws of the United States and of the law of nations in such case provided. For this purpose a competent force will be posted so as to prevent entrance and exit of vessels from the ports aforesaid. If, therefore, with a view to violate such blockade, a vessel shall approach, or shall attempt to leave any of the said ports, she will be duly warned by the com-

mander of one of the blockading vessels, who will indorse on her register the fact and date of such warning; and if the same vessel shall again attempt to enter or leave the blockaded port, she will be captured and sent to the nearest convenient port, for such proceedings against her and her cargo as prize as may be deemed advisable.

And I hereby proclaim and declare that if any person, under the pretended authority of the said States, or under any other pretense, shall molest a vessel of the United States, or the persons or cargo on board of her, such person will be held amenable to the laws of the United States for the prevention and punishment of piracy.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this nineteenth day of April, in the year of our Lord one thousand eight hundred and sixty-one, and of the independence of the United States the eighty-fifth.

(Signed) ABRAHAM LINCOLN.

By the President:

(Signed) WILLIAM SEWARD, *Secretary of State.*

No. 8.

Mr. Seward to Mr. Dallas.—(Communicated to Lord J. Russell by Mr. Dallas, May 11.)

DEPARTMENT OF STATE,
Washington, April 20, 1861.

SIR: As it is not improbable that mercenary or badly enterprising men, lured by the seductions held out in a recent proclamation under the pretended authority of the so-called Confederate States of America, may attempt to fit out privateers in the ports of England for the purpose of aggression on the commerce of the United States, I am directed by the President to instruct you to be vigilant, to the extent of your power, toward preventing any such unlawful purpose. To this end, you will promptly impart to the proper authorities any facts upon the subject which may come to your knowledge. A copy of the President's proclamation of the 19th instant is herewith inclosed, from which you will perceive that the pains and penalties of piracy will be visited on any person who may molest a vessel of the United States.

I am, &c.,

(Signed) WILLIAM H. SEWARD.

[Inclosure in No. 8.]

Proclamation by President Lincoln.

[See inclosure 2 in No. 7.]

No. 9.

Lord Lyons to Lord J. Russell.

[Extract.]

WASHINGTON, *April* 27, 1861. (Received May 14.)

I have the honor to transmit to your lordship herewith a copy of a note which I have received to-day from the Secretary of State of the

United States, communicating to me printed copies of the President's proclamation of the 19th April, declaring a blockade of the ports of the States of South Carolina, Georgia, Alabama, Florida, Louisiana, Mississippi, and Texas. I inclose two of those copies of the proclamation, which were sent to me with the note.

[8] * The Secretary of State further informs me, in the same note, that another proclamation has been signed by the President, establishing a blockade of the ports of the States of Virginia and North Carolina.

[Inclosure 1 in No. 9.]

Mr. Seward to Lord Lyons.

DEPARTMENT OF STATE,
Washington, April 27, 1861.

The undersigned, Secretary of State of the United States, has the honor to communicate to Lord Lyons the accompanying printed copies of the President's proclamation of the 19th instant, declaring a blockade of the ports of the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas.

The undersigned has the honor also to inform Lord Lyons that another proclamation has been signed by the President, and will be published to-morrow, establishing a blockade of the ports of Virginia and North Carolina.

The undersigned, &c.

(Signed) WILLIAM H. SEWARD.

[Inclosure 2 in No. 9.]

Proclamation by the President of the United States.

[See inclosure 2 in No. 7.]

No. 10.

Lord Lyons to Lord J. Russell.

WASHINGTON, *May* 2, 1861. (Received May 17.)

MY LORD: I have the honor to inclose a copy of the note by which I acknowledged the receipt of Mr. Seward's note of the 27th ultimo, announcing the intention of this Government to set on foot a blockade of the southern ports. I was careful so to word my note as to show that I accepted Mr. Seward's communication as an announcement of an intention to set on foot a blockade, not as a notification of an actual commencement of one. I believe that most of my colleagues made answers in the same sense.

I have the honor to transmit to your lordship copies of the President's proclamation, announcing the extension of the blockade to the ports of Virginia and North Carolina, which have been sent to me in a blank cover from the State Department.

I have made it my business, since the entrance of the present administration into office nearly two months ago, to endeavor to ascertain precisely their intentions with regard to the commerce of foreign nations with the States which have withdrawn from the Union. Up to the day before the blockade was announced, the Government has not itself come to any decision on the subject. Nor did I think it expedient to press it

to make any declaration so long as the commercial operations of British merchants and British vessels in the seceded States were carried on without hinderance and without inconvenience. But since the blockade has been proclaimed, I have thought myself entitled to ask with persistence for definite information respecting the mode in which it is to be carried into effect. I had in particular a long conversation on the subject with Mr. Seward, in presence of the chief clerk of the State Department, on the 29th ultimo. I had prepared Mr. Seward for the interview by suggesting to him, through the under-secretary of state, the advisableness of diminishing the disagreeable impression which the announcement of the blockade would make abroad, by giving, as soon as possible, definite assurances that it would be carried on with a liberal consideration for the interests of foreign nations.

So far as assurances in general terms go, nothing could be more satisfactory than Mr. Seward's language. I did not, however, succeed in obtaining at the time as definite a declaration of the rules which would be observed as I had hoped.

The principal point to which I drew Mr. Seward's attention was the extreme vagueness of the information which was given to us. I referred him to the notifications of blockades made by Great Britain during the late war with Russia, and pointed out to him the care and precision with which every particular was stated in them. I asked whether it was intended to issue similar notices for each southern port as soon as the actual blockade of it should commence.

The reply which I received was, that the practice of the United States was not to issue such notices, but to notify the blockade individually to each vessel approaching the blockaded port, and to inscribe a memorandum of the notice having been given on the ship's papers. No vessel was liable to seizure which had not been individually warned. This plan had, I was assured, been found to be in practice the most convenient and the fairest to all parties. The fact of there being blockading ships present to give the warning was the best notice and best proof that the port was actually and effectually blockaded.

[9] The principal objection to the plan appeared to me to be that it might in some cases expose foreign *vessels to the loss and inconvenience of making a useless voyage, which a more general and public announcement of the blockade would have prevented.

I observed to Mr. Seward that the limits of the blockade which it was intended to establish were not clearly stated. It was not easy to understand exactly to what extent of coast the expression "the ports within" the States mentioned was applicable. Mr. Seward said that it was intended to blockade the whole coast from Chesapeake Bay to the mouth of the Rio Grande. I observed to him that the extent of the coast between these two points was, I supposed, about 3,000 miles. Surely the United States had not a naval force sufficient to establish an effective blockade of such a length of coast. Mr. Seward, however, maintained that the whole would be blockaded, and blockaded effectively.

I may perhaps be allowed to refer your lordship to a clear declaration of the principles of the United States on such matters, which is contained in a note from Mr. Buchanan dated 29th December, 1846, and transmitted to the foreign office in Sir Richard Pakenham's dispatch of the same date.

Mr. Seward assured me that all foreign vessels already in port when the blockade should be set on foot would be allowed to come out with their cargoes. I asked whether they would be allowed to come out with cargoes shipped after the blockade was actually established. Mr.

Seward did not speak positively on this point; what he said seemed to imply that the time at which the cargo was shipped would not be inquired into. I said that I supposed it was clearly understood that foreign ships coming out of blockaded ports in which there were no United States customs authorities would not be interfered with by the blockading squadron, on the plea of their being without clearance or other papers required by the revenue laws.

Mr. Seward said that it was the *bona fide* intention of the Government to allow foreign vessels already in port when the blockade was established to depart without molestation.

He did not say that any particular term would be fixed after the expiration of which foreign vessels would no longer be allowed to quit blockaded ports.

He did not repeat to me the assurance he gave some time ago to one of my colleagues, that vessels arriving without a knowledge of the blockade would be allowed to go into a blockaded port and come out again.

Nor did he say anything of the intention, which he expressed to another of my colleagues, of proposing to the legislature that the United States should adhere to the declaration of the congress of Paris on maritime law.

On my pressing Mr. Seward to give me, either in writing or at all events by a formal verbal announcement, some definite information for the guidance of British merchant-vessels, he promised to send me a copy of the instructions issued to the officers of the blockading squadron, and said he was confident I should find them perfectly satisfactory. He was good enough to add, that if in any individual cases the rules of the blockade should bear hardly on British vessels, he should be ready to consider the equity of the matter, and to receive favorably any representations which I might make on behalf of the interests of British subjects.

Mr. Seward has not yet sent me the copy of the instructions. I reminded him, however, yesterday of his promise, and I hope that he will enable me to transmit a copy to your lordship by the British packet which will leave New York on the 8th instant.

I have, &c.,

(Signed) LYONS.

P. S.—Since I inclosed this dispatch I have seen in an unofficial newspaper of this morning's date a notice concerning the blockade of the ports of Virginia, a copy of which I have just time to inclose. I am unable to procure a second copy. L.

[Inclosure 1 in No. 10.]

Lord Lyons to Mr. Seward.

WASHINGTON, *April* 29, 1861.

The undersigned, Her Britannic Majesty's envoy extraordinary and minister plenipotentiary to the United States of America, has the honor to acknowledge the receipt of a note, of the day before yesterday's date, from the Secretary of State, communicating to him a proclamation which announces, among other things, that a blockade of the ports of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas will be set on foot in pursuance of the law of the United States and the law of nations, and that for this purpose a competent force will be posted, so as to prevent the entrance and exit of vessels.

The Secretary of State has, moreover, done the undersigned the honor to inform him

in the same note that it is intended to set on foot also a blockade of the ports of Virginia and North Carolina.

The undersigned, &c.,

(Signed) LYONS.

[Inclosure 2 in No. 10.]

PROCLAMATION.

By the President of the United States of America.

Whereas, for reasons assigned in my proclamation of the 19th instant, a blockade of the ports of the States of South Carolina, Georgia, Florida, Alabama, Louisiana, Mississippi, and Texas was ordered to be established;

[10] "And whereas, since that date public property of the United States has been seized, the collection of the revenue obstructed, and duly commissioned officers of the United States, while engaged in executing the orders of their superiors, have been arrested and held in custody as prisoners, or have been impeded in the discharge of their official duties without due legal process, by persons claiming to act under authorities of the States of Virginia and North Carolina;

An efficient blockade of the ports of those States will also be established.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this twenty-seventh day of April, in the year of our Lord one thousand eight hundred and sixty-one, and of the Independence of the United States the eighty-fifth.

[L. S.] ABRAHAM LINCOLN.

By the President:

(Signed) WILLIAM H. SEWARD,
Secretary of State.

[Inclosure 3 in No. 10.]

[*Extract from an American newspaper, unofficial.*]

BLOCKADE OF THE PORTS OF VIRGINIA—OFFICIAL NOTICE SERVED ON THE BAY LINE STEAMERS.—The steamer Louisiana, Captain Russell, from Norfolk, arrived at this port yesterday morning, bringing the United States mails and a number of passengers from the South. The steamer met the Lancaster, Captain Tomlinson, off North Point, and placed on board the passengers who desired to go North.

It was quite dark when the Louisiana reached Fortress Monroe, when Captain Russell was informed by an officer sent in a boat from Commander Prendergrast, of the Cumberland, that the port was in a state of blockade, and that hereafter he would not be permitted to pass up or down the bay.

There were at least ten ships of war anchored off Old Point, all of which were well manned with seamen and troops. The citizens of Norfolk and Portsmouth were still engaged in erecting harbor defenses.

The following is an official copy of the notice of blockade served on Captain Russell:

"UNITED STATES FLAG-SHIP CUMBERLAND, OFF FORTRESS MONROE,
"*Virginia, April* 30, 1861.

"*To all whom it may concern:*

"I hereby call attention to the proclamation of his Excellency Abraham Lincoln, President of the United States, under date of April 27, 1861, for an efficient blockade of the ports of Virginia and North Carolina, and warn all persons interested that I have a sufficient naval force here for the purpose of carrying out that proclamation.

"All vessels passing the capes of Virginia, coming from a distance and ignorant of the proclamation, will be warned off, and those passing Fortress Monroe will be required to anchor under the guns of the fort and subject themselves to an examination.

(Signed) "G. J. PRENDERGRAST,
"*Flag-Officer, Commanding Home Squadron.*"

The steamer Adelaide, however, left this port on Tuesday evening, with authority from the Secretary of War to continue her trips to Norfolk, not, however, allowing her to carry anything but passengers and mails. The regular boat also left last evening at her usual hour, and the line will therefore be kept up without interruption.

No. 11.

Lord Lyons to Lord J. Russell.

[Extract.]

WASHINGTON, *May* 4, 1861. (Received May 21.)

In my dispatch of the 2d instant I had the honor to report to your lordship that Mr. Seward had promised, on the 29th ultimo, to send me a copy of the instructions issued to the officers of the squadron to be employed in blockading the southern ports.

I took measures this morning to remind Mr. Seward privately of this promise. In return I received the following communication from the State Department:

> The Secretary of the Navy has furnished us with a copy of his instructions about the blockade, but as we have not been able to find a precedent for communicating them to the ministers of foreign governments, you must not expect a copy at present. You may, however, be thus informally assured that the blockade will be conducted as strictly according to the recognized rules of public law, and with as much liberality toward neutrals, as any blockade ever was by a belligerent.

Upon this, I caused Mr. Buchanan's note to Mr. Pakenham, of the 29th of December, 1846, to be pointed out to Mr. Seward as supplying a precedent for the confidential communication of instructions concerning a blockade.

The following was written to me in answer:

> I have shown Mr. Seward the precedent to which you refer, but he does not [11] think it would justify him in furnishing a copy of the instructions; for, if given to one, they must be given to all, which might lead to their inconvenient publicity. The blockade, however, will be in strict conformity to the principles mentioned by Mr. Buchanan. The proclamation is mere notice of an intention to carry it into effect, and the existence of the blockade will be made known in proper form by the the blockading vessels.

I had, of course, no other right to ask Mr. Seward for a copy of the instructions than that which he had given me by promising to send me one, in order to remove any unfavorable impression which might be made in Europe by the vagueness of the information given by the United States Government.

I have the honor to transmit to your lordship copies of a note addressed by Mr. Seward to the Spanish minister here; and of an article inserted in the Washington newspaper which is regarded as the organ of the administration. These documents appear to contain all the positive information which has hitherto been elicited concerning the mode in which the blockade will be conducted.

I have been informed, but not directly or officially, that in no case will less than fifteen days from the effective establishment of the blockade at each point be allowed for merchant-vessels already in port to take their departure, and that the effective blockade of the mouths of the Mississippi will not be begun until the 25th of this month.

[Inclosure in No. 11.]

Mr. Seward to Señor Tassara.

WASHINGTON, *May* 2, 1861.

SIR: In acknowledging the receipt of your note of the 30th ultimo, on the subject of the blockade of the ports in several of the States, I deem it proper to state, for your further information—

1. That the blockade will be strictly enforced upon the principles recognized by the law of nations.
2. That armed vessels of neutral States will have the right to enter and depart from the interdicted ports.
3. That merchant-vessels in port at the time the blockade took effect will be allowed a reasonable time for their departure.

I avail, &c.,
(Signed) WILLIAM H. SEWARD.

No. 12.

Lord Lyons to Lord J. Russell.

WASHINGTON, *May* 2, 1861. (Received May 17.)

MY LORD: Mr. Seward, the Secretary of State of the United States, sent for me yesterday to the State Department, and told me that he had reason to believe that an iron steamer, the Peerless, had been sold to the *de-facto* southern government, and was on her way out of Lake Ontario to be used as a privateer. He read me a part of a telegram which stated that the vessel was still at Toronto, and that it was believed she carried the British flag, and had regular British papers.

Mr. Seward proceeded to suggest that perhaps the governor-general of Canada might be induced to detain the vessel. I said, somewhat doubtfully, that if her papers were in order, and there was no direct proof of her being actually engaged in any unlawful enterprise, the governor-general might not have legal power to interfere with her. Mr. Seward replied that that might very well be; and, without further allusion to the Canadian authorities, proceeded to read to me a draught of a telegraphic order to the naval officers of the United States to seize the Peerless "under any flag and with any papers," if they had probable information that she had been sold to the southern insurgents. He went on to say, "I suppose you will hardly assent to this."

I replied that, far from assenting, I most positively dissented.

Mr. Seward said that if the seizure was effected, it would be upon the responsibility of this Government, who would be prepared for all the consequences which it might entail. He added, however, that the order had not yet been sanctioned by the President; that he was about to go to the Executive Mansion to attend a cabinet council, and that he would inform me of the decision which should be come to.

I said to Mr. Seward, "I not only dissent, but I solemnly protest, as Her Majesty's minister, against any attempt to seize a vessel under the British flag, and with regular British papers."

I was very much grieved, not so much at the particular fact, though that appeared to me very serious, as at the arrogant spirit and disregard of the rights and feelings of foreign nations with which the American Government seemed to be disposed to conduct the civil war in which they were about to engage. I was most anxious to do all that I could to impress upon Mr. Seward, at the outset, the impolicy and danger of the course upon which he seemed determined to enter. I particularly reminded him of the extreme susceptibility which had at all times been manifested by the Americans themselves on the subject of any interference with vessels under their own flag. I said that even if the Peerless should in fact be sold to the seceded States, she could never cause the United States anything like the inconvenience which would follow a deliberate violation of neutral rights. I concluded by repeating my protest.

Mr. Seward said little more in reply than that he would give
[12] due weight to the protest, and that *nothing would be done without the sanction of the President, whom he was about to see at a cabinet council.

I said to Mr. Seward that I begged that, when he submitted the proposed order to the President, he would distinctly say that the British minister solemnly protested against it.

This Mr. Seward promised to do. Seeing that he was evidently anxious to go to the President's house without further delay, I took my leave, merely observing that I should probably feel it my duty to address him in writing on the subject.

As soon as I got home I wrote a note to Mr. Seward, repeating my protest. I sent it to the State Department by Mr. Irvine, Her Majesty's secretary of legation. Mr. Seward had already left the Department, but Mr. Irvine delivered my note to the Assistant Secretary of State, who promised to send it in to the cabinet council which was sitting at the President's house.

In the evening, Mr. Seward sent me a note informing me that, notwithstanding my protest, the orders had been issued. I felt it my duty to reply by a note maintaining and repeating the protest.

I have the honor to inclose copies of the notes above mentioned.

I send to-day to the governor-general copies of the inclosures in this dispatch.

I have, &c.,
(Signed) LYONS.

[Inclosure 1 in No. 12.]

Lord Lyons to Mr. Seward.

WASHINGTON, *May* 1, 1861.

SIR: You have just done me the honor to inform me verbally that you had under consideration the propriety of issuing orders to the United States naval forces to seize a vessel under British colors and with regular papers, under the suspicion that she had been purchased, for unlawful purposes, by parties in the Southern States.

I at once stated to you several times, and as emphatically as I could, that I solemnly protested against any such seizure. You were good enough to assure me that you would take note of the protest. I think it, however, necessary, in order to cover my own responsibility, to record in writing, without a moment's delay, that a solemn protest was made by Her Britannic Majesty's minister against such orders before they were issued.

I have, &c.,
(Signed) LYONS.

[Inclosure 2 in No. 12.]

Mr. Seward to Lord Lyons.

DEPARTMENT OF STATE,
Washington, May 1, 1861.

MY LORD: The so-called Confederate States have waged an insurrectionary war against this Government. They are buying, and even seizing vessels in several places, for the purpose of furnishing themselves with a naval force, and they are issuing letters of marque to privateers to be employed in preying upon the commerce of this country.

You are aware that the President has proclaimed a blockade of the ports included within the insurgent States. All these circumstances are known to the world.

The President this morning received information, believed to be authentic, that the iron steamer Peerless is in the hands of the enemy on her way out of Lake Ontario, and that she has regular British papers.

Thereupon I did myself the honor to solicit an interview with you. In that interview I suggested that it would be agreeable to the President if the governor-general of Canada, with or under instructions from you, would direct the vessel to be detained. You did not think that such directions could be given in view of the uncertainties that hang over the matter. I replied that certainly, under the circumstances, this Government could not require such directions. I further stated, however, that the Government could not tolerate the fitting out and delivery of piratical vessels on the St. Lawrence, and that I should direct the Peerless to be seized and detained if the United States forces should have reliable information that she has been sold, or contracted to be sold, and has been delivered, or is to be delivered to the insurgents, to be used against the United States, under whatever flag or papers she may bear, and that the parties affected should be referred to this Government.

You thereupon verbally protested, unequivocally, and without reservation, as your note of this date, now just received, affirms.

I have, nevertheless, and notwithstanding your lordship's protest, given conditional directions for the seizure of the Peerless, in the following words:

"*To commanders of naval or other forces of the United States:*

"If you have reliable information that the Peerless has been sold, or contracted for, and has been delivered, or is to be delivered to the insurgents to be used against the United States, seize and bring her into port, and detain her there, under whatever flag or papers she may bear, and refer the parties to this Government."

I hardly need to add that this proceeding is taken with no feelings of hostility against the government of Great Britain. The President feels satisfied that Her Majesty's government will not think the seizure unnecessary, or unwarrantable, or injurious, if the information upon which it proceeds shall prove to be correct; and, on the other hand, if it shall prove to be incorrect, full satisfaction will be *promptly given
[13] to the government of Her Majesty and the parties aggrieved. The British government will be satisfied that such proceedings are sometimes indispensable when a flag is abused to cover aggressions upon a friendly nation.

I have, &c.,
(Signed) WILLIAM H. SEWARD.

[Inclosure 3 in No. 12.]

Lord Lyons to Mr. Seward.

WASHINGTON, *May* 1, 1861.

SIR: I learn with deep regret, from a note which I have just had the honor to receive from you, that the Government of the United States have given orders to the commanders of its forces to seize a vessel and bring her into port, and detain her there, "under whatever flag or whatever papers she may bear."

So far as the British flag and British papers may be affected by this measure, I must, as Her Britannic Majesty's minister, maintain and repeat the protest which I made to you, both by word of mouth and by written note, before the orders were issued.

I have, &c.,
(Signed) LYONS.

ACTS PASSED BY THE CONGRESS OF THE CONFEDERATE STATES.

No. 13.

AN ACT recognizing the existence of war between the United States and the Confederate States, and concerning letters of marque, prizes, and prize-money.

Whereas the earnest efforts made by this government to establish friendly relations between the Government of the United States and the Confederate States, and to settle all questions of disagreement between the two governments upon principles of right, justice, equity, and good faith, have proved unavailing, by reason of the refusal of the Government of the United States to hold any intercourse with the commissioners appointed by this government for the purposes aforesaid, or to

listen to any proposals they had to make for the peaceful solution of all causes of difficulty between the two governments; and whereas the President of the United States of America has issued his proclamation making requisition upon the States of the American Union for 75,000 men for the purpose, as therein indicated, of capturing forts and other strongholds within the jurisdiction of, and belonging to, the Confederate States of America, and has detailed naval armaments upon the coasts of the Confederate States of America, and raised, organized, and equipped a large military force to execute the purpose aforesaid, and has issued his other proclamation announcing his purpose to set on foot a blockade of the ports of the Confederate States; and whereas the State of Virginia has seceded from the Federal Union and entered into a convention of alliance, offensive and defensive, with the Confederate States, and has adopted the provisional constitution of the said States, and the States of Maryland, North Carolina, Tennessee, Kentucky, Arkansas, and Missouri have refused, and it is believed that the State of Delaware, and the inhabitants of the Territories of Arizona and New Mexico, and the Indian Territory south of Kansas will refuse to co-operate with the Government of the United States in these acts of hostilities and wanton aggression, which are plainly intended to overawe, oppress, and finally subjugate the people of the Confederate States; and whereas, by the acts and means aforesaid, war exists between the Confederate States and the Government of the United States, and the States and the Territories thereof, except the States of Maryland, North Carolina, Tennessee, Kentucky, Arkansas, Missouri, and Delaware, and the Territories of Arizona and New Mexico, and the Indian Territory south of Kansas: Therefore,

SECTION 1. The congress of the Confederate States of America do enact, That the president of the Confederate States is hereby authorized to use the whole land and naval force of the Confederate States to meet the war thus commenced, and to issue to private armed vessels commissions, or letters of marque and general reprisal, in such form as he shall think proper, under the seal of the Confederate States, against the vessels, goods, and effects of the Government of the United States, and of the citizens or inhabitants of the States and Territories thereof: *Provided, however*, That property of the enemy (unless it be contraband of war) laden on board a neutral vessel shall not be subject to seizure under this act: *And provided further*, That vessels of the citizens or inhabitants of the United States now in the ports of the Confederate States, except such as have been since the 5th of April last, or may hereafter be, in the service of the Government of the United States, shall be allowed thirty days after the publication of this act to leave said ports and reach their destination; and such vessels and their cargoes, excepting articles contraband of war, shall not be subject to capture under this act during said period, unless they shall have previously reached the destination for which they were bound on leaving said ports.

SEC. 2. That the president of the Confederate States shall be, and he is hereby, authorized and empowered to revoke and annul, at pleasure, all letters of marque and reprisal which he may at any time grant pursuant to this act.

[14] *SEC. 3. That all persons applying for letters of marque and reprisal, pursuant to this act, shall state in writing the name and a suitable description of the tonnage and force of the vessel, and the name and place of residence of each owner concerned therein, and the intended number of the crew, which statement shall be signed by the person or persons making such application, and filed with the secretary of state,

or shall be delivered to any other officer or person who shall be employed to deliver out such commissions, to be by him transmitted to the secretary of state.

SEC. 4. That before any commission or letters of marque and reprisal shall be issued as aforesaid, the owner or owners of the ship or vessel for which the same shall be requested, and the commander thereof for the time being, shall give bond to the Confederate States, with at least two responsible sureties not interested in such vessel, in the penal sum of $5,000, or if such vessel be provided with more than 150 men, then in the penal sum of $10,000, with condition that the owners, officers, and crew who shall be employed on board such commissioned vessel shall and will observe the laws of the Confederate States, and the instructions which shall be given them according to law for the regulation of their conduct, and will satisfy all damages and injuries which shall be done or committed contrary to the tenor thereof by such vessel during her commission, and to deliver up the same when revoked by the president of the Confederate States.

SEC. 5. That all captures and prizes of vessels and property shall be forfeited and shall accrue to the owners, officers, and crews of the vessels by whom such captures and prizes shall be made, and on due condemnation had shall be distributed according to any written agreement which shall be made between them; and if there be no such written agreement, then one moiety to the owners and the other moiety to the officers and crew, as nearly as may be, according to the rules prescribed for the distribution of prize-money by the laws of the Confederate States.

SEC. 6. That all vessels, goods, and effects the property of any citizen of the Confederate States, or of persons resident within and under the protection of the Confederate States, or of persons permanently within the territories and under the protection of any foreign prince, government, or state in amity with the Confederate States, which shall have been captured by the United States, and which shall be recaptured by vessels commissioned as aforesaid, shall be restored to the lawful owners, upon payment by them of a just and reasonable salvage, to be determined by the mutual agreement of the parties concerned, or by the decree of any court having jurisdiction, according to the nature of each case, agreeably to the provisions established by law. And such salvage shall be distributed among the owners, officers, and crews of the vessels commissioned as aforesaid, and making such captures, according to any written agreement which shall be made between them; and in case of no such agreement, then in the same manner and upon the principles hereinbefore provided in cases of capture.

SEC. 7. That before breaking bulk of any vessel which shall be captured as aforesaid, or other disposal or conversion thereof or of any articles which shall be found on board the same, such captured vessel, goods, or effects shall be brought into some port of the Confederate States, or of a nation or state in amity with the Confederate States, and shall be proceeded against before a competent tribunal, and, after condemnation and forfeiture thereof, shall belong to the owners, officers, and crew of the vessel capturing the same, and be distributed as before provided; and in the case of all captured vessels, goods, and effects which shall be brought within the jurisdiction of the Confederate States, the district courts of the Confederate States shall have exclusive original cognizance thereof as the civil causes of admiralty and maritime jurisdiction; and the said courts, or the courts, being courts of the Confederate States, into which such cases shall be removed, and in which they shall be

finally decided, shall and may decree restitution, in whole or in part, when the capture shall have been made without just cause; and, if made without probable cause, may order and decree damages and costs to the party injured, for which the owners and commanders of the vessels making such captures, and also the vessels, shall be liable.

SEC. 8. That all persons found on board any captured vessels, or on board any recaptured vessel, shall be reported to the collector of the port in the Confederate States in which they shall first arrive, and shall be delivered into the custody of the marshal of the district, or some court or military officer of the Confederate States, or of any State, in or near such port, who shall take charge of their safe-keeping and support, at the expense of the Confederate States.

SEC. 9. That the president of the Confederate States is hereby authorized to establish and order suitable instructions for the better governing and directing the conduct of the vessels so commissioned, their officers and crews, copies of which shall be delivered by the collector of the customs to the commanders when they shall give bond as provided.

SEC. 10. That a bounty shall be paid by the Confederate States of $20 for each person on board any armed ship or vessel belonging to the United States at the commencement of an engagement which shall be burned, sunk, or destroyed by any vessel commissioned as aforesaid which shall be of equal or inferior force, the same to be divided as in other cases of prize-money; and a bounty of $25 shall be paid to the owners, officers, and crews of the private armed vessels commissioned as aforesaid for each and every prisoner by them captured and brought into port, and delivered to an agent authorized to receive them, in any port of the Confederate States; and the secretary of the treasury is hereby authorized to pay, or cause to be paid, to the owners, officers, and crews of such private armed vessels, commissioned as aforesaid, or their agent, the bounties herein provided.

SEC. 11. That the commanding officer of every vessel having a commission or letters of marque and reprisal during the present hostilities between the Confederate States and the United States, shall keep a regular journal, containing a true and exact account of his daily proceedings and transactions with such vessel and the crew thereof; the ports and places he shall put into or cast anchor in, the time of his stay there, and the cause thereof; the prizes he shall take, and the nature and probable value thereof; the times and places when and where taken, and in what manner he shall dispose of the same; the ships or vessels he shall fall in with; the times and places when and where he shall meet with them, and his observations and remarks thereon; also, of whatever else shall occur to him or any of his officers or marines, or be discovered by examination or conference with
[15] *any marines or passengers of or in any other ships or vessels, or by any other means, touching the fleets, vessels, and forces of the United States, their posts and places of station and destination, strength, numbers, intents, and designs; and such commanding officer shall, immediately on his arrival in any port of the Confederate States, from or during the continuance of any voyage or cruise, produce his commission for such vessel, and deliver up such journal so kept, as aforesaid, signed with his proper name and handwriting, to the collector or other chief officer of the customs at or nearest to such port; the truth of which journal shall be verified by the oath of the commanding officer for the time being. And such collector or other chief officer of the customs shall, immediately on the arrival of such vessel, order the proper officer of the customs to go on board and take an account of the officers and men,

the number and nature of the guns, and whatever else shall occur to him on examination material to be known; and no such vessel shall be permitted to sail out of port again until such journal shall have been delivered up and a certificate obtained under the hand of such collector or other chief officer of the customs, that she is manned and armed according to her commission; and upon delivery of such certificate any former certificate of a like nature which shall have been obtained by the commander of such vessel shall be delivered up.

SEC. 12. That the commanders of vessels having letters of marque and reprisal as aforesaid neglecting to keep a journal as aforesaid, or willfully making fraudulent entries therein, or obliterating the record of any material transaction contained therein, where the interest of the Confederate States is concerned, or refusing to produce or deliver such journal, commission, or certificate, pursuant to the preceding section of this act, then and in such cases the commissions or letters of marque and reprisal of such vessels shall be liable to be revoked; and such commanders respectively shall forfeit for every such offense the sum of $1,000, one moiety thereof to the use of the Confederate States and the other to the informer.

SEC. 13. That the owners or commanders of vessels having letters of marque and reprisal as aforesaid, who shall violate any of the acts of Congress for the collection of the revenue of the Confederate States, and for the prevention of smuggling, shall forfeit the commission or letters of marque and reprisal, and they or the vessels owned or commanded by them shall be liable to all the penalties and forfeitures attaching to merchant-vessels in like cases.

SEC. 14. That on all goods, wares, and merchandise captured and made good and lawful prizes of war, by any private armed ship having commission or letters of marque and reprisal under this act, and brought into the Confederate States, there shall be allowed a deduction of 33⅓ per cent. on the amount of duties imposed by law.

SEC. 15. That 5 per centum on the net amount (after deducting all charges and expenditures) of the prize-money arising from captured vessels and cargoes, and on the net amount of the salvage of vessels and cargoes recaptured by private armed vessels of the Confederate States, shall be secured and paid over to the collector or other chief officer of the customs, at the port or place in the Confederate States at which such captured or recaptured vessels may arrive, or to the consul or other public agent of the Confederate States residing at the port or place not within the Confederate States at which such captured or recaptured vessel may arrive. And the moneys arising therefrom shall be held and are hereby pledged by the government of the Confederate States as a fund for the support and maintenance of the widows and orphans of such persons as may be slain, and for the support and maintenance of such persons as may be wounded and disabled on board of the private armed vessels commissioned as aforesaid, in any engagement with the enemy, to be assigned and distributed in such manner as shall hereafter be provided by law.

Approved May 6, 1861.

No. 14.

AN ACT regulating the sale of prizes and the distribution thereof.

SECTION 1. The congress of the Confederate States of America do not enact that all prizes of vessels and property captured by private armed

ships, in pursuance of the act passed by congress recognizing the existence of war between the United States and the Confederate States, and concerning letters of marque, prizes, and prize-goods, which may be condemned in any court of the Confederate States, shall be sold at public auction by the marshal of the district in which the same shall be condemned, within sixty days after the condemnation thereof—sufficient notice of the time and place and condition of sale being first given—on such day or days, on such terms of credit, and in such lots or proportions as may be designated by the owner or owners, or agent of the owner or owners, of the privateer which may have captured the same: *Provided*, That the term of such credit shall not exceed ninety days. And the said marshal is hereby directed to take and receive from the purchaser or purchasers of such prize-vessel and property the money therefor, or his, her, or their promissory notes, with indorsers, to be approved by the owner or owners of the privateer, to the amount of the purchase, payable according to the terms thereof.

SEC. 2. That upon all duties, costs, and charges being paid according to law, the said marshal shall, on demand, deliver and pay over to the owner or owners of the privateer, or to the agent of such owner or owners of the privateer which may have captured such prize-vessel and property, a just and equal proportion of the funds received on account of the sale thereof, and of the promissory notes directed to be taken as aforesaid, to which the said owner or owners may be entitled, according to the articles of agreement between the said owner or owners and the officers and crew of the said privateer; and a just and equal proportion of the proceeds of the sale as aforesaid shall, on demand, be also paid over by the said marshal to the officers and crew of the said privateer or to their agent or agents. And if there be no written agreement, it shall be the duty of the marshal to pay over, in manner as
[16] aforesaid, one moiety *of the proceeds of the sale of such prize-vessel and property to the owner or owners of the privateer which may have captured the same, and the other moiety of the said proceeds to the agent or agents of the officers and crew of the said privateer, to be distributed according to law, or to any agreement by them made: *Provided*, The said officers and crew, or their agent or agents, shall have first refunded to the owner or owners, or to the agent of the owner or owners, of the privateer aforesaid, the full amount of advances which shall have been made by the owner or owners of the privateer to the officers and crew thereof.

SEC. 3. That for the selling prize-property and receiving and paying over the proceeds as aforesaid the marshal shall be entitled to a commission of 1 per cent. and no more, first deducting all duties, costs, and charges which may have accrued on said property: *Provided*, That on no case of condemnation and sale of any one prize-vessel and cargo shall the commissions of the marshal exceed $250.

SEC. 4. That it shall be the duty of the marshal, within fifteen days after any sale of prize property, to file in the office of the district court of the district wherein such sale may be made, a just and true account of the sales of such prize-property, and all duties and charges thereon, together with a statement thereto annexed of the promissory notes taken on account thereof, which account shall be verified by the oath of the said marshal; and if the said marshal shall willfully neglect or refuse to file such account, he shall forfeit and pay the sum of $500 for each omission or refusal as aforesaid, to be recovered in an action of debt by any person interested in such sale and suing for the said

penalty, on account of the party or parties interested in the prize-vessel or property sold as aforesaid, in any court having recognizance thereof.

SEC. 5. That the owner or owners of any private armed vessel or vessels, or their agent or agents, may at any time before a libel shall be filed against any captured vessel or cargo remove the same from any port into which such prize-vessel or property may be first brought to any other port in the Confederate States, to be designated at the time of the removal as aforesaid, subject to the same restrictions and complying with the same regulations with respect to the payment of duties which are provided by law in relation to other vessels arriving in port with cargoes subject to the payment of duties: *Provided*, That before such removal the said captured property shall not have been attached at the suit of any adverse claimant, or a claim against the same have been interposed in behalf of the Confederate States.

Approved May 14, 1861.

[17] *DECLARATIONS OF NEUTRALITY AND REGULATIONS ISSUED BY THE GOVERNMENT OF HER BRITANNIC MAJESTY AND BY FOREIGN GOVERNMENTS.

No. 1.

Proclamation of neutrality by Her Britannic Majesty.

(May 13, 1861.)

BY THE QUEEN.—A PROCLAMATION.

VICTORIA R.

Declarations of neutrality of the British and foreign governments.

Whereas we are happily at peace with all sovereigns, powers, and states;

And whereas hostilities have unhappily commenced between the government of the United States of America and certain States styling themselves the Confederate States of America;

And whereas we, being at peace with the government of the United States, have declared our royal determination to maintain a strict and impartial neutrality in the contest between the said contending parties;

We therefore have thought fit, by and with the advice of our privy council, to issue this our royal proclamation:

And we do hereby strictly charge and command all our loving subjects to observe a strict neutrality in and during the aforesaid hostilities, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril.

And whereas in and by a certain statute made and passed in the fifty-ninth year of His Majesty King George the III, entitled "An act to prevent the enlisting or engagement of His Majesty's subjects to serve in a foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes, without His Majesty's license," it is among other things declared and enacted as follows:

"That if any natural-born subject of His Majesty, &c. (Second clause of the foreign-enlistment act.")

And it is and by the said act further enacted—

"That if any person within any part of the United Kingdom, &c. (Seventh clause of the foreign-enlistment act.")

And it is and by the said act further enacted—

"That if any person in any part of the United Kingdom, &c. (Eighth clause of the foreign-enlistment act.")

Now, in order that none of our subjects may unwarily render themselves liable to the penalties imposed by the said statute, we do hereby strictly command, that no person or persons whatsoever do commit any act, matter, or thing whatsoever, contrary to the provisions of the said statute, upon pain of the several penalties by the said statute imposed, and of our high displeasure.

And we do further warn all our loving subjects, and all persons what-

soever entitled to our protection, that if any of them shall presume, in contempt of this our royal proclamation, and of our high displeasure, to do any acts in derogation of their duty, as subjects of a neutral sovereign in the said contest, or in violation or contravention of the law of nations in that behalf; as for example, and more especially, by entering into the military service of either of the said contending parties as commissioned or non-commissioned officers or soldiers; or by serving as officers, sailors, or marines, on board any ship or vessel of war or transport of or in the service of either of the said contending parties; or by serving as officers, sailors, or marines, on board any privateer bearing letters of marque of or from either of the said contending parties; or by engaging to go or going to any place beyond the seas with intent to enlist or engage in any such service, or by procuring or attempting to procure, within Her Majesty's dominions at home or abroad, others to do so; or by fitting out, arming, or equipping any ship or vessel to be employed as a ship of war or privateer or transport by either of the said contending parties; or by breaking or endeavoring to break any blockade lawfully and actually established by or on behalf of either of the said contending parties; or by carrying officers, soldiers, dispatches, arms, military stores, or materials, or any article or articles considered and deemed to be contraband of war, according to the law or modern usage of nations, for the use or service of either of the said contending parties, all persons so offending will incur and be liable to the several penalties and penal consequences by the said statute or by the law of nations in that behalf imposed or denounced.

[18] *And we do hereby declare, that all our subjects, and persons entitled to our protection, who may misconduct themselves in the premises, will do so at their peril and of their own wrong, and that they will in nowise obtain any protection from us against any liabilities or penal consequences, but will, on the contrary, incur our high displeasure by such misconduct.

Given at our court at the White Lodge, Richmond Park, this 13th day of May, in the year of our Lord, 1861, and in the twenty-fourth year of our reign.

God save the Queen.

No. 2.

REGULATIONS AND INSTRUCTIONS PUBLISHED BY HER BRITANNIC MAJESTY'S GOVERNMENT DURING THE CIVIL WAR IN THE UNITED STATES.

Letter from the foreign office to the admiralty, colonial, war, and India offices, interdicting armed cruisers and privateers, whether of the United States of North America, or the so-styled Confederate States, from carrying prizes into British ports, June 1, 1861.

FOREIGN OFFICE, *June* 1, 1861.

MY LORDS: Her Majesty's government are, as you are aware, desirous of observing the strictest neutrality in the contest which appears to be imminent between the United States and the so-styled Confederate States of North America; and with the view more effectually to carry out this principle they propose to interdict the armed ships, and also the privateers of both parties, from carrying prizes made by them into

the ports, harbors, roadsteads, or waters of the United Kingdom, or of any of Her Majesty's colonies or possessions abroad.

I have accordingly to acquaint your lordships that the Queen has been pleased to direct that orders in conformity with the principles above stated should forthwith be addressed to all proper authorities in the United Kingdom, and to Her Majesty's naval or other authorities in all quarters beyond the United Kingdom, for their guidance in the circumstances.

I have, &c.,

(Signed) J. RUSSELL.

The LORDS COMMISSIONERS OF THE ADMIRALTY.

NOTE.—A similar letter was addressed on the same day to each of the secretaries of state for India, war, and the colonies.

2.—Extract from the London Gazette of December 15, 1863.

Letter from Earl Russell to the lords commissioners of the admiralty, and dispatch from the Duke of Newcastle to the governor of the Bahamas.

FOREIGN OFFICE, *January* 31, 1862.

MY LORDS: Her Majesty being fully determined to observe the duties of neutrality during the existing hostilities between the United States and the States calling themselves "the Confederate States of America," and being, moreover, resolved to prevent, as far as possible, the use of Her Majesty's harbors, ports, and coasts, and the waters within Her Majesty's territorial jurisdiction, in aid of the warlike purposes of either belligerent, has commanded me to communicate to your lordships, for your guidance, the following rules, which are to be treated and enforced as Her Majesty's orders and directions.

Her Majesty is pleased further to command that these rules shall be put in force in the United Kingdom and in the Channel Islands on and after Thursday, the 6th day of February next, and in Her Majesty's territories and possessions beyond the seas, six days after the day when the governor or other chief authority of each of such territories or possessions respectively shall have notified and published the same, stating in such notification that the said rules are to be obeyed by all persons within the same territories and possessions.

1. During the continuance of the present hostilities between the Government of the United States of North America and the States calling themselves "the Confederate States of America," or until Her Majesty shall otherwise order, no ship of war or privateer belonging to either of the belligerents shall be permitted to enter or remain in the port of Nassau, or in any other port, roadstead, or waters of the Bahama Islands, except by special leave of the lieutenant-governor of the Bahama Islands, or in case of stress of weather. If any such vessel should enter any such port, roadstead, or waters by special leave, or under stress of weather, the authorities of the place shall require her to put to sea as soon as possible, without permitting her to take in any supplies beyond what may be necessary for her immediate use.

If, at the time when this order is first notified in the Bahama Islands, there shall be any such vessel already within any port, roadstead, or waters of those islands, the lieutenant-governor shall give notice to such vessel to depart, and shall require her to put to sea within such time as he shall, under the circumstances, consider proper and reasonable. If there shall then be ships of war or privateers belonging to both the said belligerents within the territorial jurisdiction of Her Majesty, in to near the same port, roadstead, or waters, the lieutenant-governor shall fix the order of time in
[19] *which such vessel shall depart. No such vessel of either belligerent shall be permitted to put to sea until after the expiration of at least twenty-four hours from the time when the last preceding vessel of the other belligerent (whether the same shall be a ship of war, or privateer, or merchant ship) which shall have left the same port, roadstead, or waters, or waters adjacent thereto, shall have passed beyond the territorial jurisdiction of Her Majesty.

2. During the continuance of the present hostilities between the Government of the United States of North America and the States calling themselves the Confederate States of America, all ships of war and privateers of either of the belligerents are prohibited from making use of any port or roadstead in the United Kingdom of Great Britain and Ireland, or in the Channel Islands, or in any of Her Majesty's colonies or

foreign possessions or dependencies, or of any waters subject to the territorial jurisdiction of the British Crown, as a station or place of resort for any warlike purpose, or for the purpose of obtaining any facilities of warlike equipment; and no ship of war or privateer of either belligerent shall hereafter be permitted to sail out of or leave any port, roadstead, or water, subject to British jurisdiction, from which any vessel of the other belligerent (whether the same shall be a ship of war, a privateer, or a merchant-ship) shall have previously departed, until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the territorial jurisdiction of Her Majesty.

3. If any ship of war or privateer of either belligerent shall, after the time when this order shall be first notified and put in force in the United Kingdom and in the Channel Islands, and in the several colonies and foreign possessions and dependencies of Her Majesty, respectively enter any port, roadstead, or waters belonging to Her Majesty either in the United Kingdom or in the Channel Islands, or in any of Her Majesty's colonies or foreign possessions or dependencies, such vessel shall be required to depart and to put to sea within twenty-four hours after her entrance into such port, roadstead, or waters, except in case of stress of weather, or of her requiring provisions or things necessary for the subsistence of her crew or repairs; in either of which cases the authorities of the port, or of the nearest port, (as the case may be,) shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies, beyond what may be necessary for her immediate use; and no such vessel, which may have been allowed to remain within British waters for the purpose of repair, shall continue in any such port, roadstead, or waters, for a longer period than twenty-four hours after the necessary repairs shall have been completed: Provided, nevertheless, that in all cases in which there shall be any vessels (whether ships of war, privateers, or merchant-ships) of both the said belligerent parties in the same port, roadstead, or waters within the territorial jurisdiction of Her Majesty, there shall be an interval of not less than twenty-four hours between the departure therefrom of any such vessel (whether a ship of war, a privateer, or a merchant-ship) of the one belligerent, and the subsequent departure therefrom of any ship of war or privateer of the other belligerent; and the times hereby limited for the departure of such ships of war and privateers respectively, shall always, in case of necessity, be extended so far as may be requisite for giving effect to this proviso, but not further or otherwise.

4. No ship of war of either belligerent shall hereafter be permitted, while in any port, roadstead, or waters, subject to the territorial jurisdiction of Her Majesty, to take in supplies except provisions and such other things as may be requisite for the subsistence of her crew; and except so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer destination; and no coal shall be again supplied to any such ship of war or privateer, in the same or any other port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within British waters as aforesaid.[1]

I have, &c.,
(Signed) RUSSELL.

NOTE.—A similar letter has been addressed to the secretary of state for the home, colonial, war, and India departments, and to the lords commissioners of Her Majesty's treasury.

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[1] *Circular to the governors of the West India colonies, (not published.)*

DOWNING STREET, *July* 16, 1863.

SIR: I think it well to communicate to you the decisions at which Her Majesty's government have arrived on certain questions arising out of the instructions which I transmitted to you in my circular dispatch of the 1st February, 1862, respecting the duties of neutrality to be observed during the existing hostilities between the Federal and Confederate States of North America.

I must first, however, observe that the governor of one of Her Majesty's colonies owes no explanation of his conduct to an officer of the United States Navy, and that it will be prudent to avoid any detailed explanations, as far as the rules of courtesy will allow. It is the wish of Her Majesty's government that matters of complaint should, in general, be discussed between the two governments concerned rather than between any subordinate officers.

With regard to the issue of coal to the war-vessels of the belligerents, I have to state that coal supplied to a belligerent vessel of war, under the "special permission" contemplated in Her Majesty's proclamation, should be issued in no greater quantity than may be necessary to carry such vessel to the nearest port of her own country, (or, of course, any nearer port,) without reference to the question whether the ports of that country are or are not under blockade. In case of such blockade it will rest with the

[20] "DOWNING STREET, *October* 6, 1863.

SIR: Doubts having been expressed as to whether under the regulations of the 31st January, 1862, which were embodied in a proclamation issued by you on the 11th March following, it is required that the commander of a belligerent ship of war or privateer should obtain the permission of the local authorities before entering the ports, roadsteads, or waters of the Bahamas out-islands, when the governor is not there present, I am to acquaint you that Earl Russell has taken Her Majesty's pleasure thereupon, and you are to understand that at the ports of the out-islands, as at Nassau, the special leave of the governor himself is required, (unless in stress of weather,) by any belligerent vessel desiring to enter, with this exception only, that in cases of grave emergency and real necessity and distress, such as a sailing-vessel being dismasted, or accident happening to the machinery of a steam-vessel, the vessel may enter the ports, roadsteads, or waters on obtaining leave from a resident officer, to whom the governor shall have delegated his authority in that behalf.

With a view to give effect to Her Majesty's intentions, you will be pleased to convey to the officers, in the out-islands, to whom it may best be confided, the authority in question, taking care to communicate to them copies of the regulations of the 31st of January, 1862, and calling their especial attention to the limits of the authority delegated, and to that clause of the regulations of 31st January, 1862, in which it is directed that vessels entering under stress of weather, or by special leave, shall be required to put to sea as soon as possible.

I have, &c.,

(Signed) NEWCASTLE.

Governor BAYLEY, C. B., *&c.*, *&c.*, *&c.*

RETURN to an address of the honorable the House of Commons, dated June 3, 1864, for "Copy of any additional instructions to colonial governors on the subject of belligerent cruisers."

FREDERIC ROGERS.

COLONIAL OFFICE, *June* 6, 1864.

Circular instructions to governors of colonies respecting the treatment of prizes captured by Federal or confederate cruisers, if brought into British waters.

DOWNING STREET, *June* 2, 1964.

SIR: I think it well to communicate to you the decisions at which Her Majesty's government have arrived on certain questions which have arisen respecting the treatment of prizes captured by Federal or confederate cruisers brought into British waters.

1. If any prize captured by a ship of war of either of the belligerent powers shall be brought by the captors within Her Majesty's jurisdiction, notice shall be given by the governor to the captors immediately to depart and remove such prize.

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officer in command to seek some more convenient destination. If, within the period prescribed by the proclamation, a vessel thus furnished with coal in one of Her Majesty's possessions should apply for a second supply in the same or another colony, the application may be granted, if it is made to appear that, owing to real necessities arising from stress of weather, the coal originally given has been prematurely exhausted before it was possible that the vessel could, under existing circumstances, have reached the destination for which it was coaled.

But if it should be the case that the vessel has not, since taking in coal, been *bona fide* occupied in seeking her alleged destination, but has consumed her fuel in cruising, the coal should not be replenished under the terms of the proclamation. Such a case is not one to which the "special permission" referred to in the proclamation was intended to apply.

Her Majesty's government are of opinion that the regulations of the proclamation, thus interpreted, should be strictly adhered to without any arbitrary concession to either belligerent. It is by such a course that misunderstandings and complaints of partiality will be most certainly avoided. An unauthorized concession to one belligerent, it may be safely assumed, will not be accepted by those to whom it is made as a justification of a similar concession in the opposite direction.

In the event of any Federal or confederate vessel of war coaling at any port of the colony under your government, I have to instruct you at once to communicate to the governors of the several West Indian colonies the name of the vessel, its alleged destination, the date of receiving the coal, and the quantity allowed to be placed on board.

I have, &c.

2. A vessel which shall have been actually and *bona fide* converted into and used as a public vessel of war shall not be deemed to be a prize within the meaning of these rules.

3. If any prize shall be brought within Her Majesty's jurisdiction through mere stress of weather, or other extreme and unavoidable necessity, the governor may allow for her removal such time as he may consider to be necessary.

4. If any prize shall not be removed at the time prescribed to the captors by the governor, the governor may detain such prize until Her Majesty's pleasure shall be made known.

5. If any prize shall have been captured by any violation of the territory or territorial waters of Her Majesty, the governor may detain such prize until Her Majesty's pleasure shall be made known.

Her Majesty's government have not thought it necessary to make any addition to the instructions already given with respect to cargoes, viz, that Her Majesty's orders apply as much to prize cargoes of every kind which may be brought by any armed ships or privateers of either belligerent into British waters as to the captured vessels themselves. They do not, however, apply to any articles which may have formed part of any such cargoes if brought within British jurisdiction, not by armed ships or privateers of either belligerent, but by other persons who may have acquired or may claim property in them by reason of any dealings with the captors.

These rules are for the guidance of the executive authority, and are not intended to interfere in any way with the process of any court of justice.

I have, &c.,
(Signed) EDWARD CARDWELL.

[London Gazette, September 9, 1864.]

FOREIGN OFFICE, *September* 8, 1864.

It is hereby notified that Her Majesty has been pleased to order that for the future no ship of war belonging to either of the belligerent powers of North America shall be allowed to enter, or to remain or be in any of Her Majesty's ports for the purpose of being dismantled or sold; and Her Majesty has been pleased to give directions to the commissioners of Her Majesty's customs, and to the governors of Her Majesty's colonies and foreign possessions, to see that this order is properly carried into effect.

[Extract from the London Gazette of May 19, 1865.]

Letter from Earl Russell to the lords commissioners of the admiralty.

FOREIGN OFFICE, *May* 11, 1865.

MY LORDS: I have the honor to acquaint you that, in the existing state of the civil war in America, and the uncertainty which may be felt as to its continuance, it appears to Her Majesty's government that the time has arrived for ceasing to enforce so much of the orders which, in pursuance of my letter of the 31st of January, 1862, were issued by the several departments of Her Majesty's government, as empowered the authorities of any port belonging to Her Majesty, either in the United Kingdom or the Channel Islands, or in any of Her Majesty's colonies or foreign possessions or dependencies, to require any ship of war or privateer of either belligerent which might enter any port, roadstead, or waters belonging to Her Majesty, in order to obtain provisions or other things necessary for the subsistence of her crew, or to effect repairs, to put to sea as soon as possible after the expiration of a period of twenty-four hours, without permitting her to take in supplies beyond what might be necessary for her immediate use; and not to suffer any such vessel as might have been allowed to remain within British waters for the purpose of repairs to continue in any port, roadstead, or waters belonging to Her Majesty for a longer period than twenty-four hours after her necessary repairs should have been completed; and also so much of the same orders as limited the quantity of coal and the period within which it might be obtained, to be embarked on board any such ship of war or privateer of either belligerent.

I have addressed a similar letter to the secretaries of State for the home, colonial, war, and India departments, and to the lords commissioners of Her Majesty's treasury.

I am, &c.,
(Signed) RUSSELL.

NOTE.—A similar letter has been addressed to the secretaries of state for the home, colonial, war, and India departments, and to the lords commissioners of Her Majesty's treasury.

[Extract from the London Gazette of June 6, 1865.]

Letter from Earl Russell to the lords commissioners of the admiralty.

FOREIGN OFFICE, *June* 2, 1865.

MY LORDS: I have the honor to state to your lordships that, since the date of my letter of the 11th ultimo, intelligence has reached this country that the late president of the so-called Confederate States has been captured by the military forces of the United States, and has been transported as a prisoner to Fort Monroe, and that the armies hitherto kept in the field by the Confederate States have, for the most part, surrendered or dispersed.

In this posture of affairs, Her Majesty's government are of opinion that neutral nations cannot but consider the civil war in North America as at an end.

In conformity with this opinion, Her Majesty's government recognize that peace has been restored within the whole territory of which the United States of North America, before the commencement of the civil war, were in undisturbed possession.

As a necessary consequence of such recognition on the part of Her Majesty's government, Her Majesty's several authorities in all ports, harbors, and waters belonging to Her Majesty, whether in the United Kingdom or beyond the seas, must henceforth refuse permission to any vessel of war carrying a confederate flag to enter any such ports, harbors, and waters; and must require any confederate vessels of war which, at the time when these orders reach Her Majesty's authorities in such ports, harbors, and waters may have already entered therein on the faith of proclamations heretofore issued by Her Majesty, and which, having complied with the provisions of such proclamations, may be actually within such ports, harbors, and waters, forthwith to depart from them.

But Her Majesty's government consider that a due regard for national good faith and honor requires that Her Majesty's authorities should be instructed, as regards any such confederate vessels so departing, that they should have the benefit of the prohibition heretofore enforced against pursuit of them within twenty-four hours by a cruiser of the United States lying at the time within any such ports, harbors, and waters, and that such prohibition should be then and for the last time maintained in their favor.

If, however, the commander of any confederate vessel of war which may be found in any port, harbor, or waters of Her Majesty's dominions at the time these new orders are received by Her Majesty's authorities, or may enter such port, harbor, or waters within a month after these new orders are received, should wish to divest his vessel of her warlike character, and, after disarming her, to remain without a confederate flag in British waters, Her Majesty's authorities may allow the commander of such vessel to do so at his own risk in all respects, in which case he should be distinctly apprised that he is to expect no further protection from Her Majesty's government except such as he may be entitled to in the ordinary course of the administration of the law in time of peace.

The rule of twenty-four hours would, of course, not be applicable to the case of such a vessel.

I have addressed a similar letter to the secretaries of state for the home, colonial, India, and war offices, and also to the lords commissioners of Her Majesty's
[22] treasury, requesting them, as I do your lordships, to issue instructions in conformity with the decision of Her Majesty's government to the several British authorities at home or abroad who may be called upon to act in the matter.

I am, &c.,
(Signed) RUSSELL.

NOTE.—A similar letter was addressed to the secretaries of state for the home, colonial, war, and India departments, and to the lords commissioners of Her Majesty's treasury.

No. 3.

DECLARATIONS AND NOTIFICATIONS ISSUED BY OTHER GOVERNMENTS DURING THE CIVIL WAR IN AMERICA.

FRANCE.

Declaration respecting neutrality of France during the struggle in America.

PARIS, *le* 10 *juin* 1861.

Le ministre des affaires étrangères a soumis à l'empereur la déclaration suivante, que sa majesté a revêtue de son approbation:

Déclaration.

Sa majesté l'empereur des français, prenant en considération l'état de paix qui existe entre la France et les états-Unis d'Amérique, a résolu de maintenir une stricte neutralité dans la lutte engagée entre le gouvernements de l'union et les états qui prétendent former une confédération particulière.

En conséquence, sa majesté, vu l'article 14 de l'ordonnance de la marine du mois d'août 1861, l'article 3 de la loi du 10 avril 1825, les articles 84 et 85 du code pénal 65 et suivants du décret du 24 mars 1852, 313, et suivants du Code pénal. Maritime, et l'article 21 du Code Napoléon,

Déclare:

1. Il ne sera permis à aucun navire de guerre ou corsaire de l'un ou l'autre des belligérants d'entrer et de séjourner avec des prises dans nos ports ou rades pendant plus de vingt-quatre heures, hors le cas de relâche forcée.

2. Aucune vente d'objets provenant de prises ne pourra avoir lieu dans nos dits ports ou rades.

3. Il est interdit à tout Français de prendre commission de l'une des deux parties pour armer des vaisseaux en guerre, ou d'accepter des lettres de marque pour faire la course maritime, ou de concourrir d'une manière quelconque à l'equipement ou l'armement d'une navire de guerre ou corsaire de l'une des deux parties.

4. Il est également interdit à tout Français, résidant en France ou à l'étranger, de s'enrôler ou prendre du service, soit dans l'armée de terre, soit à bord des bâtiments de guerre ou des corsaires de l'un ou de l'autre des belligérants.

5. Les Français residant en France ou à l'étranger devront également s'abstenir de tout fait qui, commis en violation des lois de l'empire ou du droit des gens, pourrait être considéré comme un acte hostile à l'une des deux parties, et contraire à la neutralité que nous avons résolu d'observer.

Les contrevenants aux défenses et recommendations contenues dans la présente déclaration seront poursuivis, s'il y a lieu, conformément aux dispositions de la loi du 10 avril 1825, et aux articles 84 et 85 du Code pénal, sans préjudice de l'application qu'il pourrait y avoir lieu de faire aux dits contrevenants des dispositions de l'article 21 du Code Napoléon, et des articles 65 et suivants du décret du 24 mars, 1852, sur la marine marchande, 313 et suivants du Code pénal pour l'armée de mer.

Sa majesté déclare, en outre, que tout Français qui ne se sera pas conformé aux présentes prescriptions ne pourra prétendre à aucune pro-

tection de son gouvernement contre les actes ou mesures, quels qu'ils soient, que les belligérants pourraient exercer ou décréter.

(Signé) NAPOLEON.

Le ministre des affaires étrangères,

(Signé) E. THOUVENAL.

Circulaire addressée par le ministre de la marine le 5 février 1864, *aux préfets maritimes, déterminant les régles à observer à l'égard des navires des belligérants de l'Amérique du nord.*

PARIS, *le 5 février* 1864.

MESSIEURS: Par sa déclaration du 10 juin 1861, insérée au Moniteur, le gouvernement de l'empereur a fait connaitre les principes qui servent de base à la neutralité qu'il entendait observer dans la guerre qui ensanglante l'Amérique du nord. Depuis lors, ces principes ont reçu leur application tant dans nos colonies que dans les ports de la métropole.

Toutefois, la continuation de la guerre ayant conduit les belligérants à porter le théâtre des hostilités maritimes dans les eaux voisines des états neutres de l'Europe, et les ayant amenés à chercher dans nos ports des moyens de réparations et de ravitaillement, le gouvernement de l'empereur a jugé utile de vous rappeler de nouveau les règles à observer pour maintenir sa neutralité conformément au droit public et aux traditions de la marine française, et de déterminer, en conséquence, le traitment qui doit être appliqué, sans distinction de pavillon, aux bâtiments des belligérants.

Vous aurez donc à tenir la main à la stricte exécution des dispositions suivantes:

1. Aucun bâtiment de guerre ou corsaire belligérant ne sera admis à séjourner plus de vingt-quatre heures dans un port de l'empire ou des colonies françaises ou dans les eaux adjacentes, sauf le
[23] *cas de relâche forcée pour cause de mauvais temps, d'avaries ou d'épuisement des approvisionments nécessaires à la sécurité de la navigation.

2. En aucun cas, un belligérant ne peut faire usage d'un port français dans un but de guerre ou pour s'y approvisionner d'armes ou de munitions de guerre, ou pour y exécuter, sous prétexte de réparations, des travaux ayant pour but d'augmenter sa puissance militaire.

3. Il ne peut être fourni à un navire de guerre ou corsaire belligérant que les vivres, denrées, et moyens de réparations nécessaires à la subsistence de son équipage et à la sécurité de sa navigation.

4. Aucun bâtiment de guerre ou corsaire belligérant, admis à se ravitailler ou à se réparer dans un port français, ne pourra y prolonger son séjour au-delà de vingt-quatre heures après que ses provisions seront embarqués et ses réparations terminées, sauf le cas prévu ci-après.

Lorsque des bâtiments de guerre, corsaires ou navires de commerce des deux parties belligérantes se trouveront ensemble dans un port français, il y aura un intervalle qui ne pourra être moindre de vingt-quatre heures entre le départ de tout navire de l'un des belligérants et le départ subséquent de tout bâtiment de guerre ou corsaire de l'autre belligérant. Ce délai sera étendu, en cas de besoin, sur l'ordre de l'autorité maritime, autant que cela pourra être nécessaire.

Vous aurez soin de donner connaissance des dispositions qui précèdent à toute navire, de l'un ou de l'autres de belligérants, qui se présenterait dans les ports, rades, ou eaux soumis à votre commandement.

(Signé) Comte P. DE CHASSELOUP-LAUBAT.

PRUSSIA.

The minister of commerce issued the notification annexed to the mercantile classes in the Baltic ports:

It is my duty to make known to you that during the continuance of the conflict that has broken out among the North American States, the mercantile classes must abstain from all enterprises which are forbidden by the general principles of international law, and especially by the ordinance of the 12th of June, 1856, which has relation to the declaration of the 12th of April, 1856, upon the principles of maritime law. Moreover, I will not omit to make especially noticeable by you that the royal government will not permit to its shipping or its subjects, which may mix up in these conflicts by taking letters of marque, sharing in privateering enterprises, carrying merchandise contraband of war, or forwarding dispatches, to have the benefit of its protection against any losses which may befall them through such transactions.

The equipment of privateers in the ports of this country is forbidden by the laws of the land, as is known to the mercantile community.

SPAIN.

Royal decree concerning neutrality in the United States war, issued by Her Catholic Majesty on June 17, 1861.

[Translation.]

Taking into consideration the relations which subsist between Spain and the United States of America, and the propriety of causing no detriment to the reciprocal sentiments of good understanding on account of the grave events which have happened in that republic, I have resolved to maintain the strictest neutrality in the contest entered into between the Confederate States of the South and the Federal States of the Union; and in order to avoid the prejudice which might result to my subjects and to navigation and commerce, in consequence of the want of clear dispositions by which to regulate their conduct, in accordance with my council of ministers, I decree the following:

ART. 1. The fitting-out, supplying, and equipment of any privateer in any of the ports of the monarchy is prohibited, whatever may be the flag she may hoist.

ART. 2. The proprietors, masters, or captains of merchant-vessels are also prohibited from receiving letters of marque, and from contributing in any way to the armament and equipment of vessels of war or privateers.

ART. 3. Ships of war or privateers with prizes are prohibited from entering and remaining for more than twenty-four hours in the ports of the monarchy, except in the case of forced arrival. When the latter shall occur, the authorities shall watch the ship, and shall oblige her to put to sea as soon as possible, without permitting her to supply herself with anything more than which is necessary for the moment, but under no circumstances with arms or with munitions of war.

ART. 4. Articles taken from prizes shall not be sold at the ports of the monarchy.

ART. 5. The transport of all articles of commerce under the Spanish flag is guaranteed, except when intended for the blockaded ports. The carrying of effects of war, and of papers or communications for the belligerents is prohibited. Contraveneurs will be responsible for their own acts, and will have no right to the protection of my government.

ART. 6. All Spaniards are prohibited from enlisting in the belligerent

armies, and from engaging themselves for service in vessels of war or privateers.

ART. 7. My subjects will abstain from any act which, by violating the laws of the kingdom, might be considered contrary to neutrality.

ART. 8. Contraveneurs of the above orders will have no right to the protection of my government; they will suffer the consequences of the measures taken by the belligerents, and will be punished according to the laws of Spain.

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[24] *BRAZIL.

Circular to the presidents of provinces.

[Translation.]

RIO DE JANEIRO, MINISTRY OF FOREIGN AFFAIRS,
August 1, 1861.

ILLUSTRIOUS AND EXCELLENT SIR: The strife that has broken out between the Federal Government of the United States of North America, and some of those States which have declared themselves constituted as a separate confederation, may produce questions for our country, for the solution of which it is important that your excellency should be prepared; and I have, therefore, received orders from His Majesty the Emperor, to declare to your excellency that the imperial government considers that it ought to maintain itself in the most strict neutrality during the war in which those States are unhappily engaged: and in order that that neutrality may be preserved, it is fitting that the following determinations be observed:

The Confederate States have no recognized existence; but, having constituted a distinct government *de facto*, the imperial government cannot consider their naval armaments as acts of piracy, nor refuse them, with the necessary restrictions, the character of belligerents, which they have assumed.

In conformity with this, Brazilian subjects are to abstain from all participation and aid in favor of one of the belligerents, and they must not take part in any acts which can be considered as hostile to one of the two parties, and contrary to the obligations of the neutrality.

The exportation of warlike articles from the ports of the Empire for the new Confederate States is absolutely prohibited, whether it is intended to be done under the Brazilian flag, or that of another nation.

The same trade in contraband of war must be forbidden to Brazilian ships, although they may be destined for the ports subject to the Government of the North American Union.

No ship with the flag of one of the belligerents, and which may be employed in this war, or intended for it, can be provisioned, equipped, or armed in the ports of the Empire, the furnishing of victuals and naval provisions indispensable for the continuation of the voyage not being included in this prohibition.

No ship of war or cruiser shall be allowed to enter and remain with prizes in our ports or bays more than twenty-four hours, except in case of forced arrival, and they shall in no way be allowed to dispose of the said prizes, or of objects coming from them.

In the execution of these measures, and in the solution of the questions which may arise, your excellency will be guided by the principles of international law, keeping in mind the instructions issued by this

ministry on the 18th of May, 1854, retaining the purport of the circular of the 30th of July, 1859, relative to the United States at strife with the Confederate States; and yet you will communicate to the imperial government any difficulties or extraordinary occurrences that require fresh instructions.

I repeat, &c.,

(Signed) BENVENUTO AUGUSTO DE MAGALHAES TAQUES.

To His Excellency the PRESIDENT of the Province of ———.

[Circular.]

Fresh instructions to the presidents of provinces, regulating the neutrality of Brazil in the struggle of the United States of America.

[Translation.]

FOREIGN OFFICE, *Rio de Janeiro, June* 23, 1863.

MOST ILLUSTRIOUS AND EXCELLENT SIR: Judging it necessary to amplify the circular of this ministry, dated 1st August, 1861, in which were established the regulating principles of the neutrality which the imperial government resolved on assuming in presence of the struggle of the United States of North America, as much to explain some of these principles as to indicate in general the cases in which the neutrality ought to be considered violated, and the way to make it effective, His Majesty the Emperor orders the following to be declared to your excellency, for your knowledge, and for the purposes of the execution thereof.

By the words, "save in cases of putting in through distress," mentioned in the circular referred to, it ought also to be understood that the vessel shall not be obliged to go out of the port within the term of twenty-four hours, if she shall not have been enabled to effect the repairs indispensable for her exposure to the sea without danger of being lost.

If like danger should occur from bad weather; if finally she should be pursued by the enemy. In these hypotheses it will be for the government at the capital, and for the presidents in the provinces, to decide, on view of the circumstances, as to the time within which the vessel ought to go out.

Even if they do not bring in prizes, privateers shall not be permitted a stay of more than twenty-four hours in the ports of the Empire, save in case of having put in through distress.

The prizes of which the circular of 1st August treats are the vessels captured by the belligerents or by the privateers, so that the penalty imposed on those who bring in prizes is not applicable to those which may only have brought in objects taken from them. It is not, however, permitted, in any case, to dispose of the said objects, much less of the prizes.

In conformity with the above-cited circular, the belligerent ships can only receive, in the ports of the Empire, such provisions and ship's stores as they are actually in need of, and make such repairs as are necessary for the continuation of the voyage.

The disposition presupposes that the vessel is bound for some port or other, and only on her voyage, and through necessity put into a port of the Empire.

The presupposition of the circular will not, however, be veri-
[25] fied if a vessel seeks the port *repeatedly; or if, after taking in fresh provisions in one port, she should enter another immediately afterward under the same pretext, save in cases which are proved to have been through stress of weather.

The frequency, therefore, without a sufficiently justified motive, ought to authorize the suspicion that the vessel is not really on her voyage, but is cruising about on the seas in the neighborhood of the Empire in order to capture enemies' ships.

The shelter and aid, which in such cases is afforded to one of the belligerents, may be qualified as help or favor shown against the other, and therefore as breaking the declared neutrality.

It is consequently necessary that a ship which has once entered in one of our ports should no longer be received in the same port, or in another, a short time after she may have received provisions and ship's stores, and have repaired, save in the case duly proved of "the act of God," unless after a reasonable time, which may lead one to believe that the vessel had already withdrawn from the coasts of the Empire, and had returned to the same after having completed her destined voyage.

For such motives as those explained above, it shall not be permitted to belligerent vessels to receive stores in the ports of Brazil, which shall have come direct to them in vessels of any nation; for this would signify that belligerent vessels do not seek our ports on their passage, and from unforeseen necessity, but with the purpose of remaining in the proximity of the coasts of the Empire, taking the necessary precaution beforehand, for that purpose, to furnish themselves with the means of continuing their enterprise. The toleration of such an abuse would be equivalent to permitting the ports of the Empire to serve as bases for operations of the belligerents.

The principles of the circular of the 1st of August, 1861, being thus explained, it is necessary that the faithful observance of the following conditions be exacted in the ports, bays, and anchorages of the Empire:

1. The vessels of war admitted to an anchorage or port must remain in the most perfect state of tranquillity, and in most perfect peace with all the vessels which may be lying there, even with those of war, or armed for war, belonging to their enemy.

2. They cannot increase their crews by engaging seamen of any nation whatsoever, their own countrymen included.

3. They cannot, in like manner, increase the number and the caliber of their artillery, nor by any means perfect the same, or purchase or ship portable arms and munitions of war.

4. They cannot place themselves in ambush in the ports and anchorages or at the islands and capes of the territorial waters of the Empire, to await vessels of the enemy which may go in or out, nor must they even seek information respecting those vessels which are expected to arrive at or leave the port, nor finally to set off after an enemy's vessel seen or signaled.

5. They cannot go out immediately after a vessel belonging to the nation of their enemy or to a neutral shall have left. Being a steamer or sailing-vessel, both the one that goes out and the one that remains, twenty-four hours must elapse between the departure of the one and that of the other. Should the vessel going out be a sailing-vessel, and the one remaining a steamer, the latter cannot leave before seventy-two hours shall have expired.

6. During their stay in port, the belligerents can neither employ force or stratagem to retake prizes made from their countrymen who

may be in the same place of shelter, nor can they liberate prisoners of their nation.

7. They cannot, in a neutral port, either sell or receive ransom for the prizes taken from the enemy, before the validity of the prize be recognized by the proper tribunals.

Let it be understood that the infraction of each of these seven conditions will constitute so many cases of violation of the neutrality of the Empire, subjecting the infractors to the penalties which are therein imposed.

And to render the neutrality effective, to restrain and to repress the abuses which may be practiced, the following measures should be employed:

1. To verify, previous to the granting of shelter, the character of the vessel and her antecedents in other ports of the Empire, to be afterward enabled to grant or deny entrance and stay: to make the favor scarce or double the vigilance.

2. To mark out the anchorage where the vessels may be under the immediate eye of the police, far from suspicious places and circumstances.

3. To order, from the moment of their entry and until their departure, the watching of the movements of the two belligerents, and the verifying the harmlessness of the objects which they may embark.

4. To order the police not to consent to the disembarkation and sale of the objects which came from the prizes.

5. To hinder the making of prizes within the territorial waters of the Empire, employing force for this purpose, if necessary; and if the prizes or objects coming therefrom which have entered the ports of the Empire shall have been made within the said territorial waters, they ought to be collected by the competent authorities to be restored to their legitimate owners, the sale of such objects being always considered null.

6. Not to admit in the ports of the Empire the belligerents that may once have violated the neutrality.

7. To cause to retire immediately from the maritime territory of the Empire, without furnishing them with any supplies whatever, the vessels which attempt to violate the neutrality.

8. Finally to make use of force, or, in default, or by insufficiency of the same, to protest solemnly and energetically against the belligerent who, being warned and intimated, does not desist from violating the neutrality of the Empire; ordering the forts and vessels of war to fire on the belligerent who may attack his enemy in our territory, and on the armed vessel which may prepare to leave the port before the expiration of the time marked for the departure of the belligerent's adversary.

And because the steamer Alabama, of the Confederate States, manifestly violated the neutrality of the Empire by having infringed the dispositions of the circular of the 1st of August, 1861, making
[26] *Rata Island the base of her operations—for to that place she carried prizes, and from thence proceeded to make others, which she ordered to be burned, after having kept them there some days at the anchorage place of that island—His Majesty the Emperor orders that the said steamer be no more received in any port of the Empire.

I renew, &c.,

(Signed) MARQUIS DE ABRANTES.

His Excellency ——— ———,

President of the Province of ———.

BELGIUM.

[Translation.]

Belgium has given its adhesion to the principles laid down in the declaration of the congress of Paris of April 16, 1856. This adhesion was published, together with the said declaration, (16th June, 1856,) in the Belgian Moniteur of June 8, 1856.

The commercial public is notified that instructions on this subject have been given to the judicial, maritime, and military authorities, warning them that privateers, under whatever flag or commission, or letters of marque, are not to be allowed to enter our ports except in case of imminent perils of the sea. The aforesaid authorities are charged, consequently, to keep a strict watch upon all such privateers and their prizes, and to compel them to put to sea again as soon as practicable.

The same authorities have been charged not to recognize the validity of any commission or letter of marque whatsoever.

All persons subject to the laws of Belgium, who shall fit out, or take any part in any privateering expedition, will therefore expose themselves to the danger, on the one hand, of being treated as pirates abroad, and, on the other, to prosecution before Belgian tribunals with all the rigor of the laws.

RUSSIA.

To the commander-in-chief of the port of Cronstadt.

His imperial highness the general admiral, foreseeing the possibility of ships belonging to the Southern States of the American Union, which have seceded from the United States of North America, arriving at our ports during the present navigation, has directed me to inform your excellency, for your guidance, that, according to the opinion of the minister of foreign affairs, the flag of men-of-war belonging to the seceded States must not be saluted.

That there may be no obstacle in the way of commerce, merchant-vessels of the seceded States are to be treated according to the rules acted on by us with regard to Italian merchant-vessels sailing under the Italian flag, *i. e.*, according to the treaties that are at present in force, (Commercial Treaty concluded between America and us, December 6–18, 1832.)

Should the crews of vessels belonging to the seceded States not wish to acknowledge the authority of the consuls appointed by the Federal Government of Washington, then in case of dispute they must abide by the decision of our local authorities, in the same manner as foreigners whose governments have no representatives in our Empire.

(Signed) General-Major GREIG,
Director of the Chancellery of the Minister of Marine.

Circular addressed to the custom-houses on the White, Baltic, Black, and Azoff Seas.

By order of the minister of finance, the department of foreign trade prescribes: In case any merchant-vessels arrive in our ports belonging

to the Southern States of the American Union, the same not acknowledging the authority of the Government of the United States of America, the said vessels are to be treated and received as hitherto, according to the treaty of 1832, should even their ships' papers not be in order, which may occur in consequence of the present political condition of the United States of America.

(Signed) General-Lieutenant PASHKOFF,
Director of the Department of Foreign Trade.
SORNIN, *Chief of Section*, &c.

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[27] *NETHERLANDS.

[Translation.]

AT THE HAGUE.

In obedience to the King's orders the ministers for foreign affairs, of justice, and of the marine, present to the knowledge of all it may concern, that, to guard against probable difficulties during the doubtful complications in the United States of North America, no privateers under any flag soever, or provided with any commission or letters of marque, or their prizes, shall be admitted into our havens or sea-ports, unless in case of marine disaster, and that requisite orders be issued that under any circumstances such privateers and their prizes be required to go again to sea as speedily as possible.

The ministers above named.

[Translation.]

THE HAGUE.

The minister for foreign affairs and the minister of justice, by the King's authority, warn, by these presents, all inhabitants of the kingdom, that during the existing disturbances in the United States of America, they in nowise take part in privateering, because the Netherlands government has acceded to the declaration upon maritime rights set forth by the Paris conference of 1856, whereby, among other matters, privateering is abolished, and no recognition of commissions got for letters of marque permitted. Also that commissions and letters of marque, in conflict with the aforesaid prohibition, which may issue to inhabitants of the Netherlands, cannot have a lawful effect in behalf of the King's subjects, or of any abroad who are in subjection to the laws of the kingdom. Those who, under such circumstances, engage in, or lend their aid in privateering to other people, will be considered as pirates, and prosecuted according to law in the Netherlands, and subjected to the punishment provided for the commission of such offenses.

The ministers above named.

[Translation.]

THE HAGUE, *June* 1861.

The minister for foreign affairs, apprised by a communication from the minister of marine that the King had authorized the naval force in the West Indies to be seasonably strengthened by His Majesty's steam-frigate Zealand, and the screw-propellers Dyambi and Vesuvius, for the

purpose of giving protection to the trade and navigation of the Netherlands during the contest which seems to be in existence in the United States of North America, wherever it may be desired, therefore esteems it to be his duty to direct the attention of shipmasters, consignees, and freighters to the peril to which their insurance against loss will be exposed by any violation of the obligations imposed on neutral powers to respect actual blockades, and not to carry contraband of war, or dispatches of belligerents.

In these cases they will be subject to all the resulting losses that may follow, without the benefit of any protection or intervention on the part of His Majesty's government. Of which take notice.

The ministers above named.

PORTUGAL.

[Translation.]

PALACE OF NECESSIDADES, *July* 29, 1861.

It being proper, in view of the circumstances at present existing in regard to the United States of America, to carry into effect the principles established in the Declaration of Paris of April 16, 1856, made by the representatives of the powers that signed the treaty of peace of the 30th of March of that year, to which declaration my government acceded, and likewise, for the same reason, to adopt other measures which I deem opportune, I have been pleased, after hearing the council of state, to decree as follows:

ARTICLE 1. In all the ports and waters of this kingdom, as well on the continent and in the adjacent islands as in the ultramarine provinces, Portuguese subjects and foreigners are prohibited from fitting out vessels for privateering.

ARTICLE 2. In the same ports and waters referred to in the preceding article, is, in like manner, prohibited the entrance of privateers and of the prizes made by privateers, or by armed vessels.

The cases of overruling necessity (*força maior*) in which, according to the law of nations, hospitality is indispensable, are exempted from this regulation, without permission, however, being allowed, in any manner, for the sale of any objects proceeding from prizes.

The ministers and secretaries of state in all the departments will thus understand, and cause it to be executed.

(Signed) KING.

(Countersigned)

MARQUEZ DE LOULE.
ALBERTO ANTONIO DE MORAES CARVALHO.
VISCONDE DE SA DA BANDEIRA.
CARLOS BENTO DA SILVA.
THIAGO AUGUSTO VELLOSO DE HORTA.
ANTONIO JOSE D'AVILA.

[28] * HAWAIIAN ISLANDS.

Proclamation of the King of the Hawaiian Islands, declaring the neutrality of the Hawaiian Islands in the war between the United States and the so-called Confederate States.

KAILUA, *August* 26, 1861.

Be it known to all whom it may concern that we, Kamehameha IV, King of the Hawaiian Islands, having been officially notified that hostilities are now unhappily pending between the Government of the United States and certain States thereof, styling themselves "the Confederate States of America," hereby proclaim our neutrality between the said contending parties.

That our neutrality is to be respected to the full extent of our jurisdiction, and that all captures and seizures made within the same are unlawful, and in violation of our rights as a sovereign.

And be it further known that we hereby strictly prohibit all our subjects, and all who reside or may be within our jurisdiction, from engaging, either directly or indirectly, in privateering against the shipping or commerce of either of the contending parties, or of rendering any aid to such enterprises whatever; and all persons so offending will be liable to the penalties imposed by the laws of nations, as well as to the laws of said States, and they will in nowise obtain any protection from us as against any penal consequences which they may incur.

Be it further known that no adjudication of prizes will be entertained within our jurisdiction, nor will the sale of goods or other property belonging to prizes be allowed.

Be it further known that the rights of asylum are not extended to the privateers or their prizes of either of the contending parties, excepting only in cases of distress or of compulsory delay by stress of weather or dangers of the sea, or in such cases as may be regulated by treaty stipulation.

Given at our marine residence of Kailua, this 26th day of August, 1861, and the seventh of our reign.

By the King,
(Signed) KAMEHAMEHA.

By the King and Kuhina Nui,

KAAHUMANU.
R. C. WYLLIE.

BREMEN.

Ordinance of senate against privateering.

(Published July 4, 1861.)

[Translation.]

The senate finds it necessary, in regard to the events which have occurred in North America, to renew the regulations contained in its ordinance of April 29, 1854, and accordingly makes the following notification for general observance:

1. All subjects of the state of Bremen are forbidden, under severe penalties, both from meddling in any way with privateering and from taking part therein, either by fitting out privateers themselves, or contributing, through others, to the same.

2. The proper officers are ordered not, on any account, to allow the fitting out or provisioning of privateers, under whatever flag, or carrying whatever letters of marque, in any port of the Bremen territory, nor to admit into a Bremen port any such privateers, or the prizes made by them, except in cases of proved stress of weather at sea.

Resolved at Bremen, in the assembly of the senate, on the 2d, and published on the 4th of July, 1861.

HAMBURG.

Ordinance against privateering.

[Translation.]

On the occasion of the events which have taken place in the United States of North America, the senate reminds the public that, according to the notification of July 7, 1856, relative to the declaration of the congress of Paris on the application of maritime law in time of war, privateering is entirely abolished, and therefore it is prohibited to engage in any way in privateering, or to take part in it either in fitting out privateers or by assisting others to do so. The proper orders have also been issued not to allow in Hamburg ports the fitting out or provisioning of privateers, under whatever flag, or furnished with whatever letters of marque, and not to admit into Hamburg ports or roadsteads any such privateers, with or without prizes, except in cases of proved stress of weather at sea.

Given in the assembly of the senate, Hamburg, July 19, 1861.

[29] *LAWS OF GREAT BRITAIN AND THE UNITED STATES FOR THE ENFORCEMENT OF NEUTRALITY.

BRITISH FOREIGN ENLISTMENT ACTS.

(59 George III, cap. 69: July 3, 1819.)

AN ACT to prevent the enlisting or engagement of His Majesty's subjects to serve in foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes, without His Majesty's license.

British and American neutrality laws.

Whereas the enlistment or engagement of His Majesty's subjects to serve in war in foreign service, without His Majesty's license, and the fitting out and equipping and arming of vessels by His Majesty's subjects, without His Majesty's license, for warlike purposes in or against the dominions or territories of any foreign prince, state, potentate, or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province, or against the ships, goods, or merchandise of any foreign prince, state, potentate, or persons as aforesaid, or their subjects, may be prejudicial to and tend to endanger the peace and welfare of this kingdom: And whereas the laws in force are not sufficiently effectual for preventing the same,

Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this act, an act passed in the ninth year of the reign of his late Majesty, King George the Second, intituled "An act to prevent the listing of His Majesty's subjects to serve as soldiers without His Majesty's license," and also an act passed in the twenty-ninth year of the reign of his said late Majesty King George the Second, intituled "An act to prevent His Majesty's subjects from serving as officers under the French King, and for better enforcing an act passed in the ninth year of his present Majesty's reign to prevent the enlisting His Majesty's subjects to serve as soldiers without His Majesty's license; and for obliging such of His Majesty's subjects as shall accept commissions in the Scotch brigade in the service of the states-general of the United Provinces, to take the oaths of allegiance and abjuration," and also an act passed in Ireland in the eleventh year of the reign of his said late Majesty King George the Second, intituled "An act for the more effectual preventing the enlisting of His Majesty's subjects to serve as soldiers in foreign service without His Majesty's license;" and also an act passed in Ireland in the nineteenth year of the reign of his said late Majesty King George the Second, intituled "An act for the more effectual preventing His Majesty's subjects from entering into foreign service, and for publishing an act of the seventh year of King William the Third, intituled 'An act to prevent foreign education,'" and all and every the clauses and provisions of the said several acts contained, shall be and the same are hereby repealed.

II. *And be it further declared and enacted*, That if any natural-born

subject of His Majesty, his heirs and successors, without the leave or license of His Majesty, his heirs or successors, for that purpose first had and obtained under the sign-manual of His Majesty, his heirs or successors, or signified by order in council, or by proclamation of His Majesty, his heirs or successors, shall take or accept, or shall agree to take or accept, any military commission, or shall otherwise enter into the military service as a commissioned or non-commissioned officer, or shall enlist or enter himself to enlist, or shall agree to enlist or to enter himself to serve as a soldier, or to be employed or to serve in any warlike or military operation in the service of or for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the power of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or soldier, or in any other military capacity,; or if any natural-born subject of His Majesty shall, without such leave or license as aforesaid, accept, or agree to take or accept, any commission, warrant or appointment as an officer, or shall enlist or enter himself, or shall agree to enlist or enter himself to serve as a sailor or marine, or to be employed or engaged, or shall serve in and on board any ship or vessel of war, or in and on board of any ship or vessel used or fitted out, or equipped, or intended to be used for any warlike purpose, in the service of or for or under or in aid of any foreign power, prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people; or if any natural-born subject of His Majesty shall, without such leave or license as aforesaid, engage, contract, or agree to go, or shall go to any foreign state, country, colony, province, or part of any province, or to any place beyond the seas, with the intent or in order to enlist or enter himself to serve, or with intent to serve in any
[30] warlike *or military operation whatever, whether by land or by sea, in the service of or for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or in the service of or for or under or in aid of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or a soldier, or in any other military capacity, or as an officer or sailor, or marine in any such ship or vessel as aforesaid, although no enlisting money or pay or reward shall have been or shall be in any or either of the cases aforesaid actually paid to or received by him, or by any person to or for his use or benefit; or if any person whatever within the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions elsewhere, or in any country, colony, settlement, island, or place belonging to or subject to His Majesty, shall hire, retain, engage, or procure, or shall attempt or endeavor to hire, retain, engage, or procure, any person or persons whatever to enlist, or to enter or engage to enlist, or to serve or to be employed in any such service or employment as aforesaid, as an officer, soldier, sailor, or marine, either in land or sea service, for or under and in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or for or under or in aid of any persons exercising or assuming to exercise any powers of government as aforesaid, or to go or to agree to go or embark from any part of His Majesty's dominions, for the purpose or with intent to be so enlisted, entered, engaged, or employed as aforesaid, whether any

enlisting money, pay, or reward shall have been or shall be actually given or received, or not; in any or either of such cases, every person so offending shall be deemed guilty of a misdemeanor, and upon being convicted thereof, upon any information or indictment, shall be punishable by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted.

III. *Provided always, and be it enacted*, That nothing in this act contained shall extend or be construed to extend to render any person or persons liable to any punishment or penalty under this act who at any time before the 1st day of August, 1819, within any part of the United Kingdom, or of the islands of Jersey, Guernsey, Alderney, or Sark, or at any time before the 1st day of November, 1819, in any part or place out of the United Kingdom, or of the said islands, shall have taken or accepted, or agreed to take or accept, any military commission, or shall have otherwise enlisted into any military service as a commissioned or non-commissioned officer, or shall have enlisted, or entered himself to enlist, or shall have agreed to enlist or to enter himself to serve as a soldier, or shall have served, or having so served, shall, after the said 1st day of August, 1819, continue to serve in any warlike or military operation either as an officer or soldier, or in any other military capacity, or shall have accepted, or agreed to take or accept any commission, warrant, or appointment as an officer, or shall have enlisted or entered himself to serve, or shall have served, or having so served shall continue to serve as a sailor or marine, or shall have been employed or engaged, or shall have served, or having so served shall, after the 1st day of August, continue to serve in and on board of any ship or vessel of war, used or fitted out, or equipped or intended for any warlike purpose; or shall have engaged, or contracted or agreed to go, or shall have gone, or having so gone to shall, after the 1st day of August, continue in any foreign state, country, colony, province, or part of a province, or to or in any place beyond the seas, unless such person or persons shall embark at or proceed from some port or place within the United Kingdom, or the islands of Jersey, Guernsey, Alderney, or Sark, with intent to serve as an officer, soldier, sailor, or marine, contrary to the provisions of this act, after the said 1st day of August, or shall embark or proceed from some port or place out of the United Kingdom, or the islands of Jersey, Guernsey, Alderney, or Sark, with such intent as aforesaid, after the said 1st day of November, or who shall, before the passing of this act, and within the said United Kingdom, or the said islands, on or before the 1st day of November, 1819, in any port or place out of the said United Kingdom, or the said islands, have hired, retained, engaged, or procured, or attempted or endeavored to hire, retain, engage, or procure, any person or persons whatever to enlist or to enter, or to engage to enlist or to serve, or be employed in any such service or employment as aforesaid as an officer, soldier, sailor, or marine, either in land or sea service, or to go, or agree to go or embark for the purpose or with the intent to be so enlisted, entered, or engaged, or employed contrary to the prohibitions respectively in this act contained, anything in this act contained to the contrary in anywise notwithstanding; but that all and every such persons and person shall be in such state and condition, and no other, and shall be liable to such fines, penalties, forfeitures, and disabilities, and none other, as such person or persons was or were liable and subject to before the passing of this act, and as such person or persons would have been in, and been liable and subject to, in case this act and the said recited acts by this act repealed had not been passed or made.

IV. *And be it further enacted*, That it shall and may be lawful for any justice of the peace residing at or near to any port or place within the United Kingdom of Great Britain and Ireland, where any offense made punishable by this act as a misdemeanor shall be committed, on information on oath of any such offense, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such justice, or any justice of the peace; and it shall be lawful for the justice of the peace before whom such offender shall be brought, to examine into the nature of the offense upon oath, and to commit such person to gaol, there to remain until delivered by due course of law, unless such offender shall give bail, to the satisfaction of the said justice, to appear and answer to any information or indictment to be preferred against him according to law for the said offense; and that all such offenses which shall be committed within that part of the United Kingdom called England, shall and may be proceeded and tried in His Majesty's court of king's bench at Westminster, and the venue in such case laid at Westminster, or at the assizes or session of oyer and terminer and gaol delivery, or at any quarter or general sessions of the peace in or for the county or place where such offense was committed; and that all such offenses which shall be committed within that part of the United Kingdom called Ireland, shall and may be prosecuted in His Majesty's court of king's bench at Dublin, and the venue be laid at Dublin, or at any assizes or session of oyer and terminer and gaol delivery, or at any quarter or general sessions of the peace in and for the county or place where such offense was committed; and all such offenses as shall
[31] be committed in Scotland shall and may be *prosecuted in the court of justiciary in Scotland, or any other court competent to try criminal offenses committed within the county, shire, or stewartry within such offense was committed; and where any offense made punishable by this act as a misdemeanor shall be committed out of the said United Kingdom, it shall be lawful for any justice of the peace residing near to the port or place where such offense shall be committed, on information on oath of any such offense, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such justice, or any other justice of the peace for such place; and it shall be lawful for the justice of the peace before whom such offender shall be brought, to examine into the nature of the offense upon oath, and to commit such person to gaol, there to remain till delivered by due course of law, or otherwise to hold such offender to bail to answer for such offense in the superior court, competent to try and having jurisdiction to try criminal offenses committed in such port or place; and all such offenses committed at any place out of the said United Kingdom shall and may be prosecuted and tried in any superior court of His Majesty's dominions competent to try and having jurisdiction to try criminal offenses committed at the place where such offense shall be committed.

V. *And be it further enacted*, That in case any ship or vessel, in any port or place within His Majesty's dominions, shall have on board any such person or persons who shall have been enlisted or entered to serve, or shall have engaged, or agreed, or been procured to enlist, or enter, or serve, or who shall be departing from His Majesty's dominions for the purpose and with the intent of enlisting or entering to serve, or to be employed, or of serving or being engaged or employed in the service of any foreign prince, state, or potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign colony,

province, or part of any province or people, either as an officer, soldier, sailor, or marine, contrary to the provisions of this act, it shall be lawful for any of the principal officers of His Majesty's customs where any such officer of the customs shall be, and in any part of His Majesty's dominions in which there are no officers of His Majesty's customs, for any governor, or persons having the chief civil command, upon information on oath given before them respectively, which oath they are hereby respectively authorized and empowered to administer, that such person or persons aforesaid is or are on board such ship or vessel, to detain and prevent any such ship or vessel, or to cause such ship or vessel to be detained and prevented from proceeding to sea on her voyage with such persons as aforesaid on board: *Provided nevertheless*, That no principal officers, governor, or person shall act as aforesaid upon such information upon oath as aforesaid unless the party so informing shall not only have deposed in such information that the person or persons on board such ship or vessel hath or have been enlisted or entered to serve, or hath or have been engaged, or agreed, or been procured to enlist, or enter, or serve, or is or are departing as aforesaid for the purpose and with the intent of enlisting or entering to serve, or to be employed, or of serving, or being engaged or employed in such service as aforesaid, but shall also have set forth in such information, upon oath, the facts or circumstances upon which he forms his knowledge or belief, enabling to give such information upon oath; and that all and every person and persons convicted of willfully false swearing in any such information upon oath, shall be deemed guilty of and suffer the penalties on persons convicted of willful and corrupt perjury.

VI. *And be it further enacted*, That if any master, or other person having or taking the charge or command of any ship or vessel in any part of the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions beyond the seas, shall knowingly and willingly take on board, or if such master or other person having the command of any such ship or vessel, or any owner or owners of any such ship or vessel, shall knowingly engage to take on board any person or persons who shall have been enlisted or entered to serve, or shall have engaged, or agreed, or been procured to enlist, or enter, or serve, or who shall be departing from His Majesty's dominions for the purpose and with the intent of enlisting or entering to serve, or to be employed, or of serving, or being engaged or employed in any naval or military service, contrary to the provisions of this act, such master, or owner, or other person as aforesaid, shall forfeit and pay the sum of fifty pounds for each and every such person so taken or engaged to be taken on board; and, moreover, every such ship or vessel so having on board, conveying, carrying, or transporting any such person or persons, shall and may be seized and detained by the collector, comptroller, surveyor, or other officer of the customs, until such penalty or penalties shall be satisfied and paid, or until such master or person, or the owner or owners of such ship or vessel, shall give good and sufficient bail, by recognizance before one of His Majesty's justices of the peace, for the payment of such penalty or penalties.

VII. *And be it further enacted*, That if any person within any part of the United Kingdom, or in any part of His Majesty's dominions beyond the seas, shall, without the leave and license of His Majesty for that purpose first had and obtained as aforsaid, equip, furnish, fit out, or arm, or attempt or endeavor to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or

arming of any ship or vessel with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, state, or potentate, or of any foreign colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province or people, as a transport or store-ship, or with intent to cruise or commit hostilities against any prince, state, or potentate, or against the subjects or citizens of any prince, state, or potentate, or against the persons exercising or assuming to exercise the powers of any government in any colony, province, or part of any province or country, or against the inhabitants of any foreign colony, province, or part of any province or country with whom His Majesty shall not then be at war; or shall, within the United Kingdom, or any of His Majesty's dominions, or in any settlement, colony, territory, island, or place belonging or subject to His Majesty, issue or deliver any commission for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid, every person so offending shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, upon any information or indictment, be punished by fine and imprisonment, or either
[32] of them, at the discretion of the court in *which such offender shall be convicted; and every such ship or vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of any such ship or vessel, shall be forfeited; and it shall be lawful for any officer of His Majesty's customs or excise, or any other officer of His Majesty's navy, who is by law empowered to make seizures for any forfeiture incurred under any of the laws of customs or excise, or the laws of trade and navigation, to seize such ships and vessels as aforesaid, and in such places and in such manner in which the officers of His Majesty's customs or excise and the officers of His Majesty's navy are empowered respectively to make seizures under the laws of customs and excise, or under the laws of trade and navigation; and that every such ship and vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of such ship and vessel, may be prosecuted and condemned in the like manner and in such courts as ships or vessels may be prosecuted and condemned, for any breach of the law made for the protection of the revenues of customs and excise, or of the laws of trade and navigation.

VIII. *And be it further enacted*, That if any person in any part of the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions beyond the seas, without the leave and license of His Majesty for that purpose first had and obtained as aforesaid, shall, by adding to the number of the guns of such vessel, or by changing those on board for other guns, or by the addition of any equipment for war, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting the warlike force of any ship or vessel of war, or cruiser, or other armed vessel which at the time of her arrival in any part of the United Kingdom or any of His Majesty's domininions was a ship of war, cruiser, or armed vessel in the service of any foreign prince, state, or potentate, or any person or persons exercising or assuming to exercise any powers of government in or over any colony, province, or part of any province or people belonging to the subjects of any such prince, state, or potentate, or to the inhabitants of any colony, province, or part of any province or country under the control of any person or persons so exercising or assuming to

exercise the powers of government, every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon being convicted thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted.

IX. *And be it further enacted*, That offenses made punishable by the provisions of this act, committed out of the United Kingdom, may be prosecuted and tried in His Majesty's court of King's Bench at Westminister, and the venue in such case laid at Westminster, in the county of Middlesex.

X. *And be it further enacted*, That any penalty or forfeiture inflicted by this act may be prosecuted, sued for, and recovered by action of debt, bill, plaint, or information in any of His Majesty's courts of record at Westminster or Dublin, or in the court of exchequer, or in the court of session in Scotland, in the name of His Majesty's attorney-general for England or Ireland, or His Majesty's advocate for Scotland, respectively, or in the name of any person or persons whatsoever; wherein no essoign, protection, privilege, wager of law, nor more than one imparlance shall be allowed; and in every action or suit the person against whom judgment shall be given for any penalty or forfeiture under this act shall pay double costs of suit; and every such action or suit shall and may be brought at any time within twelve months after the offense committed, and not afterward; and one moiety of every penalty to be recovered by virtue of this act shall go and be applied to His Majesty, his heirs, or successors, and the other moiety to the use of such person or persons as shall first sue for the same, after deducting the charges of prosecution from the whole.

XI. *And be it further enacted*, That if any action or suit shall be commenced, either in Great Britain or elsewhere, against any person or persons for anything done in pursuance of this act, all rules and regulations, privileges and protections, as to maintaining or defending any suit or action and pleading therein, or any costs thereon, in relation to any acts, matters, or things done, or that may be done by any officer of customs or excise or by any officer of His Majesty's navy, under any act of Parliament in force on or immediately before the passing of this act for the protection of the revenues of customs and excise, or prevention of smuggling, shall apply and be in full force in any such action or suit as shall be brought for anything done in pursuance of this act, in as full and ample a manner to all intents and purposes as if the same privileges and protections were repeated and re-enacted in this act.

XII. *Provided always, and be it further enacted*, That nothing in this act contained shall extend, or be construed to extend, to subject to any penalty any person who shall enter into the military service of any prince, state, or potentate in Asia, with leave or license, signified in the usual manner, from the governor-general in council, or vice-president in council, of Fort William, in Bengal, or in conformity with any orders or regulations issued or sanctioned by such governor-general or vice-president in council.

(33 and 34 Vict., cap. 90; August 9, 1870.)

AN ACT to regulate the conduct of Her Majesty's subjects during the existence of hostilities between foreign states with which Her Majesty is at peace.

Whereas it is expedient to make provision for the regulation of the

conduct of Her Majesty's subjects during the existence of hostilities between foreign states with which Her Majesty is at peace:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

PRELIMINARY.

1. This act may be cited for all purposes as "The Foreign Enlistment Act, 1870."

[33] *2. This act shall extend to all the dominions of Her Majesty, including the adjacent territorial waters.

3. This act shall come into operation in the United Kingdom immediately on the passing thereof, and shall be proclaimed in every British possession by the governor thereof as soon as may be after he receives notice of this act, and shall come into operation in that British possession on the day of such proclamation, and the time at which this act comes into operation in any place is, as respects such place, in this act referred to as the commencement of this act.

ILLEGAL ENLISTMENT.

4. If any person, without the license of Her Majesty, being a British subject, within or without Her Majesty's dominions, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign state at war with any foreign state at peace with Her Majesty, and in this act referred to as a friendly state, or whether a British subject or not within Her Majesty's dominions, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign state as aforesaid, he shall be guilty of an offense against this act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labor.

5. If any person, without the license of Her Majesty, being a British subject, quits or goes on board any ship with a view of quitting Her Majesty's dominions, with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state, or, whether a British subject or not, within Her Majesty's dominions, induces any other person to quit or to go on board any ship with a view of quitting Her Majesty's dominions with the like intent, he shall be guilty of an offense against this act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labor.

6. If any person induces any other person to quit Her Majesty's dominions or to embark on any ship within Her Majesty's dominions under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state, he shall be guilty of an offense against this act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labor.

7. If the master or owner of any ship, without the license of Her

Majesty, knowingly either takes on board, or engages to take on board, or has on board such ship within Her Majesty's dominions any of the following persons, in this act referred to as illegally enlisted persons, that is to say—

(1.) Any person who, being a British subject within or without the dominions of Her Majesty, has, without the license of Her Majesty, accepted or agreed to accept any commission or engagement in the military or naval service of any foreign state at war with any friendly state;

(2.) Any person, being a British subject, who, without the license of Her Majesty, is about to quit Her Majesty's dominions with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state;

(3.) Any person who has been induced to embark under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state;

Such master or owner shall be guilty of an offense against this act, and the following consequences shall ensue; that is to say—

(1.) The offender shall be punishable by fine and imprisonment, or either of those punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labor; and

(2.) Such ship shall be detained until the trial and conviction or acquittal of the master or owner, and until all penalties inflicted on the master or owner have been paid, or the master or owner has given security for the payment of such penalties to the satisfaction of two justices of the peace, or other magistrate or magistrates having the authority of two justices of the peace; and

(3.) All illegally enlisted persons shall, immediately on the discovery of the offense, be taken on shore, and not be allowed to return to the ship.

ILLEGAL SHIP-BUILDING AND ILLEGAL EXPEDITIONS.

8. If any person within Her Majesty's dominions, without the license Her Majesty, does any of the following acts; that is to say—

[34] *(1.) Builds, or agrees to build, or causes to be built, any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state; or

(2.) Issues or delivers any commission for any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state; or

(3.) Equips any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state; or

(4.) Dispatches, or causes or allows to be dispatched, any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state;

Such person shall be deemed to have committed an offense against this act, and the following consequences shall ensue:

(1.) The offender shall be punishable by fine and imprisonment, or

either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labor.

(2.) The ship in respect of which any such offense is committed, and her equipment, shall be forfeited to Her Majesty:

Provided, That a person building, causing to be built, or equipping a ship in any of the cases aforesaid, in pursuance of a contract made before the commencement of such war as aforesaid, shall not be liable to any of the penalties imposed by this section in respect of such building or equipping, if he satisfies the conditions following, that is to say:

(1.) If forthwith, upon a proclamation of neutrality being issued by Her Majesty, he gives notice to the secretary of state that he is so building, causing to be built, or equipping such ship, and furnishes such particulars of the contract, and of any matters relating to, or done, or to be done under the contract, as may be required by the secretary of state;

(2.) If he gives such security, and takes and permits to be taken such other measures, if any, as the secretary of state may prescribe for insuring that such ship shall not be dispatched, delivered, or removed without the license of Her Majesty until the termination of such war aforesaid.

9. Where any ship is built by order of or on behalf of any foreign state when at war with a friendly state, or is delivered to or to the order of such foreign state, or to any person who to the knowledge of the person building is an agent of such foreign state, or is paid for by such foreign state or such agent, and is employed in the military or naval service of such foreign state, such ship shall, until the contrary is proved, be deemed to have been built with a view to being so employed, and the burden shall lie on the builder of such ship of proving that he did not know that the ship was intended to be so employed in the military or naval service of such foreign state.

10. If any person within the dominions of Her Majesty, and without the license of Her Majesty, by adding to the number of the guns, or by changing those on board for other guns, or by the addition of any equipment for war, increases or augments, or procures to be increased or augmented, or is knowingly concerned in increasing or augmenting the warlike force of any ship which at the time of her being within the dominions of Her Majesty was a ship in the military or naval service of any foreign state at war with any friendly state, such person shall be guilty of an offense against this act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labor.

11. If any person within the limits of Her Majesty's dominions, and without the license of Her Majesty, prepares or fits out any naval or military expedition to proceed against the dominions of any friendly state, the following consequences shall ensue:

(1.) Every person engaged in such preparation or fitting out, or assisting therein, or employed in any capacity in such expedition, shall be guilty of an offense against this act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labor.

(2.) All ships and their equipments, and all arms and munitions of war, used in or forming part of such expedition, shall be forfeited to Her Majesty.

12. Any person who aids, abets, counsels, or procures the commission of any offense against this act shall be liable to be tried and punished as a principal offender.

13. The term of imprisonment to be awarded in respect of any offense against this act shall not exceed two years.

ILLEGAL PRIZE.

14. If, during the continuance of any war in which Her Majesty may be neutral, any ship, goods, or merchandise captured as prize of war within the territorial jurisdiction of Her Majesty, in violation
[35] * of the neutrality of this realm, or captured by any ship which may have been built, equipped, commissioned, or dispatched, or the force of which may have been augmented, contrary to the provisions of this act, are brought within the limits of Her Majesty's dominions by the captor, or any agent of the captor, or by any person having come into possession thereof with knowledge that the same was prize of war so captured as aforesaid, it shall be lawful for the original owner of such prize, or his agent, or for any person authorized in that behalf by the government of the foreign state to which such owner belongs, to make application to the court of admiralty for seizure and detention of such prize, and the court shall, on due proof of the facts, order such prize to be restored.

Every such order shall be executed and carried into effect in the same manner, and subject to the same right of appeal, as in case of any order made in the exercise of the ordinary jurisdiction of such court; and in the mean time, and until a final order has been made on such application, the court shall have power to make all such provisional and other orders as to the care or custody of such captured ship, goods, or merchandise, and (if the same be of perishable nature or incurring risk of deterioration) for the sale thereof, and with respect to the deposit or investment of the proceeds of any such sale, as may be made by such court in the exercise of its ordinary jurisdiction.

GENERAL PROVISION.

15. For the purposes of this act a license by Her Majesty shall be under the sign-manual of Her Majesty, or be signified by order in council or by proclamation of Her Majesty.

LEGAL PROCEDURE.

16. Any offense against this act shall, for all purposes of and incidental to the trial and punishment of any person guilty of any such offense, be deemed to have been committed either in the place in which the offense was wholly or partly committed, or in any place within Her Majesty's dominions in which the person who committed such offense may be.

17. Any offense against this act may be described in any indictment or other document relating to such offense, in cases where the mode of trial requires such a description, as having been committed at the place where it was wholly or partly committed, or it may be averred generally to have been committed within Her Majesty's dominions, and the venue or local description in the margin may be that of the county, city, or place in which the trial is held.

18. The following authorities, that is to say, in the United Kingdom

any judge of a superior court; in any other place within the jurisdiction of any British court of justice, such court, or, if there are more courts than one, the court having the highest criminal jurisdiction in that place, may, by warrant or instrument in the nature of a warrant in this section included in the term "warrant," direct that any offender charged with an offense against this act shall be removed to some other place in Her Majesty's dominions for trial in cases where it appears to the authority granting the warrant that the removal of such offender would be conducive to the interests of justice, and any prisoner so removed shall be triable at the place to which he is removed, in the same manner as if his offense had been committed at such place.

Any warrant for the purposes of this section may be addressed to the master of any ship or to any other person or persons, and the person or persons to whom such warrant is addressed shall have power to convey the prisoner therein named to any place or places named in such warrant, and to deliver him, when arrived at such place or places, into the custody of any authority designated by such warrant.

Every prisoner shall, during the time of his removal under such warrant as aforesaid, be deemed to be in the legal custody of the person or persons empowered to remove him.

19. All proceedings for the condemnation and forfeiture of a ship, or ship and equipment, or arms and munitions of war, in pursuance of this act, shall require the sanction of the secretary of state or such chief executive authority as is in this act mentioned, and shall be had in the court of admiralty, and not in any other court: and the court of admiralty shall, in addition to any power given to the court by this act, have, in respect of any ship or other matter brought before it in pursuance of this act, all powers which it has in the case of a ship or matter brought before it in the exercise of its ordinary jurisdiction.

20. Where any offense against this act has been committed by any person by reason whereof a ship, or ship and equipment, or arms and munitions of war, has or have become liable to forfeiture, proceedings may be instituted contemporaneously or not, as may be thought fit, against the offender in any court having jurisdiction of the offense, and against the ship, or ship and equipment, or arms and munitions of war, for the forfeiture in the court of admiralty: but it shall not be necessary to take proceedings against the offender because proceedings are instituted for the forfeiture, or to take proceedings for the forfeiture because proceedings are taken against the offender.

21. The following officers, that is to say:

(1.) Any officer of customs in the United Kingdom, subject, nevertheless, to any special or general instructions from the commissioners of customs, or any officer of the board of trade, subject, nevertheless, to any special or general instructions from the board of trade;

[36] *(2.) Any officer of customs or public officer in any British possession, subject, nevertheless, to any special or general instructions from the governor of such possession;

(3.) Any commissioned officer on full pay in the military service of the Crown, subject, nevertheless, to any special or general instructions from his commanding officer;

(4.) Any commissioned officer on full pay in the naval service of the Crown, subject, nevertheless, to any special or general instructions from the admiralty or his superior officer, may seize or detain any ship liable to be seized or detained in pursuance of this act, and such officers are in this act referred to as the "local authority:" but nothing in this act contained shall derogate from the power of the court admiralty to direct

any ship to be seized or detained by any officer by whom such court may have power under its ordinary jurisdiction to direct a ship to be seized or detained.

22. Any officer authorized to seize or detain any ship in respect of any offense against this act may, for the purpose of enforcing such seizure or detention, call to his aid any constable or officers of police or any officers of Her Majesty's army or navy or marines, or any excise officers or officers of customs, or any harbor-master or dock-master, or any officers having authority by law to make seizures of ships, and may put on board any ship so seized or detained, any one or more of such officers, to take charge of the same and to enforce the provisions of this act, and any officer seizing or detaining any ship under this act may use force, if necessary, for the purpose of enforcing seizure or detention, and if any person is killed or maimed by reason of his resisting such officer in the execution of his duties, or any person acting under his orders, such officer so seizing or detaining the ship, or other person, shall be freely and fully indemnified as well against the Queen's Majesty, her heirs, and successors, as against all persons so killed, maimed, or hurt.

23. If the secretary of state or the chief executive authority is satisfied that there is a reasonable and probable cause for believing that a ship within Her Majesty's dominions has been or is being built, commissioned, or equipped contrary to this act, and is about to be taken beyond the limits of such dominions, or that a ship is about to be dispatched contrary to this act, such secretary of state or chief executive authority shall have power to issue a warrant stating that there is reasonable and probable cause for believing as aforesaid, and upon such warrant the local authority shall have power to seize and search such ship, and to detain the same until it has been either condemned or released by process of law, or in manner hereinafter mentioned.

The owner of the ship so detained, or his agent, may apply to the court of admiralty for its release, and the court shall, as soon as possible, put the matter of such seizure and detention in course of trial between the applicant and the Crown.

If the applicant establish to the satisfaction of the court that the ship was not and is not being built, commissioned, or equipped, or intended to be dispatched contrary to this act, the ship shall be released and restored.

If the applicant fail to establish to the satisfaction of the court that the ship was not and is not being built, commissioned, or equipped, or intended to be dispatched contrary to this act, then the ship shall be detained till released by order of the secretary of state or chief executive authority.

The court may, in cases where no proceedings are pending for its condemnation, release any ship detained under this section on the owner giving security to the satisfaction of the court that the ship shall not be employed contrary to this act, notwithstanding that the applicant may have failed to establish to the satisfaction of the court that the ship was not and is not being built, commissioned, or intended to be dispatched contrary to this act. The secretary of state or the chief executive authority may likewise release any ship detained under this section on the owner giving security to the satisfaction of such secretary of state or chief executive authority that the ship shall not be employed contrary to this act, or may release the ship without such security if the secretary of state or chief executive authority think fit so to release the same.

If the court be of opinion that there was not reasonable and probable

cause for the detention, and if no such cause appear in the course of the proceedings, the court shall have power to declare that the owner is to be indemnified by the payment of costs and damages in respect of the detention, the amount thereof to be assessed by the court, and any amount so assessed shall be payable by the commissioners of the treasury out of any moneys legally applicable for that purpose. The court of admiralty shall also have power to make a like order for the indemnity of the owner, on the application of such owner to the court, in a summary way, in cases where the ship is released by the order of the secretary of state or the chief executive authority, before any application is made by the owner or his agent to the court for such release.

Nothing in this section contained shall affect any proceedings instituted or to be instituted for the condemnation of any ship detained under this section where such ship is liable to forfeiture, subject to this provision, that if such ship is restored in pursuance of this section, all proceedings for such condemnation shall be stayed; and where the court declares that the owner is to be indemnified by the payment of costs and damages for the detainer, all costs, charges, and expenses incurred by such owner in or about any proceedings for the condemnation of such ship shall be added to the costs and damages payable to him in respect of the detention of the ship.

Nothing in this section contained shall apply to any foreign non-commissioned ship dispatched from any part of Her Majesty's dominions after having come within them under stress of weather, or in the course of a peaceful voyage, and upon which ship no fitting out or equipping of a warlike character has taken place in this country.

24. Where it is represented to any local authority, as defined by this act, and such local authority believes the representation, that there is a reasonable and probable cause for believing that a ship within
[37] *Her Majesty's dominions has been or is being built, commissioned, or equipped contrary to this act, and is about to be taken beyond the limits of such dominions, or that a ship is about to be dispatched contrary to this act, it shall be the duty of such local authority to detain such ship, and forthwith to communicate the fact of such detention to the secretary of state or chief executive authority.

Upon the receipt of such communication the secretary of state or chief executive authority may order the ship to be released if he thinks there is no cause for detaining her, but if satisfied that there is reasonable and probable cause for believing that such ship was built, commissioned, or equipped, or intended to be dispatched in contravention of this act, he shall issue his warrant, stating that there is reasonable and probable cause for believing as aforesaid, and upon such warrant being issued further proceedings shall be had as in cases where the seizure or detention has taken place on a warrant issued by the secretary of state without any communication from the local authority.

Where the secretary of state or chief executive authority orders the ship to be released on the receipt of a communication from the local authority without issuing his warrant, the owner of the ship shall be indemnified by the payment of costs and damages in respect of the detention upon application to the court of admiralty in a summary way in like manner as he is entitled to be indemnified where the secretary of state having issued his warrant under this act releases the ship before any application is made by the owner or his agent to the court for such release.

25. The secretary of state or the chief executive authority may, by warrant, empower any person to enter any dock-yard or other place

within Her Majesty's dominions and inquire as to the destination of any ship which may appear to him to be intended to be employed in the naval and military service of any foreign state at war with a friendly state, and to search such ship.

26. Any powers or jurisdiction by this act given to the secretary of state may be exercised by him throughout the dominions of Her Majesty, and such powers and jurisdiction may also be exercised by any of the following officers, in this act referred to as the chief executive authority, within their respective jurisdictions: that is to say:

(1.) In Ireland by the lord-lieutenant or other the chief governor or governors of Ireland for the time being, or the chief secretary to the lord-lieutenant;

(2.) In Jersey by the lieutenant-governor;

(3.) In Guernsey, Alderney, and Sark, and the dependent islands, by the lieutenant-governor;

(4.) In the Isle of Man by the lieutenant-governor;

(5.) In any British possession by the governor.

A copy of any warrant issued by a secretary of state or by any officer authorized in pursuance of this act to issue such warrant in Ireland, the Channel Islands, or the Isle of Man, shall be laid before Parliament.

27. An appeal may be had from any decision of a court of admiralty under this act to the same tribunal and in the same manner to and in which an appeal may be had in cases within the ordinary jurisdiction of the court as a court of admiralty.

28. Subject to the provisions of this act providing for the award of damages in certain cases in respect of the seizure or detention of a ship by the court of admiralty, no damages shall be payable, and no officer or local authority shall be responsible, either civilly or criminally, in respect of the seizure or detention of any ship in pursuance of this act.

29. The secretary of state shall not, nor shall the chief executive authority, be responsible in any action or other legal proceedings whatsoever for any warrant issued by him in pursuance of this act, or be examinable as a witness, except at his own request, in any court of justice in respect of the circumstances which led to the issue of the warrant.

INTERPRETATION CLAUSE.

30. In this act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them, that is to say:

"Foreign state" includes any foreign prince, colony, province, or part of any province or people, or any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people.

"Military service" shall include military telegraphy and any other employment whatever in or in connection with any military operation.

"Naval service" shall, as respects a person, include service as a marine, employment as a pilot in piloting or directing the course of a ship of war or other ship when such ship of war or other ship is being used in any military or naval operation, and any employment whatever on board a ship of war, transport, store-ship, privateer, or ship under letters of marque; and as respects a ship, include any user of a ship as a transport, store-ship, privateer, or ship under letters of marque.

"United Kingdom" includes the Isle of Man, the Channel Islands, and other adjacent islands.

"British possession" means any territory, colony, or place being part

of Her Majesty's dominions, and not part of the United Kingdom, as defined by this act.

"The secretary of state" shall mean any one of Her Majesty's principal secretaries of state.

[38] *"The governor" shall, as respects India, mean the governor-general or the governor of any presidency, and where a British possession consists of several constituent colonies, mean the governor-general of the whole possession or the governor of any of the constituent colonies, and as respects any other British possession it shall mean the officer for the time being administering the government of such possession: also any person acting for or in the capacity of a governor, shall be included under the term "governor."

"Court of admiralty" shall mean the high court of admiralty of England or Ireland, the court of session of Scotland, or any vice-admiralty court within Her Majesty's dominions.

"Ship" shall include any description of boat, vessel, floating battery, or floating craft: also any description of boat, vessel, or other craft or battery, made to move either on the surface of or under water, or sometimes on the surface of and sometimes under water.

"Building," in relation to a ship, shall include the doing of any act toward or incidental to the construction of a ship, and all words having relation to building shall be construed accordingly.

"Equipping," in relation to a ship, shall include the furnishing a ship with any tackle, apparel, furniture, provisions, arms, munitions, or stores, or any other thing which is used in or about a ship for the purpose of fitting or adapting her for the sea or naval service, and all words relating to equipping shall be construed accordingly.

"Ship and equipment" shall include a ship and everything in or belonging to a ship.

"Master" shall include any person having the charge or command of a ship.

REPEAL OF ACTS, AND SAVING CLAUSES.

31. From and after the commencement of this act, an act passed in the fifty-ninth year of the reign of His late Majesty King George the Third, chapter sixty-nine, intituled "An act to prevent the enlistment or engagement of His Majesty's subjects to serve in foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes, without His Majesty's license," shall be repealed; provided that such repeal shall not affect any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offense committed before this act comes into operation, nor the institution of any investigation or legal proceeding, or any other remedy for enforcing any such penalty, forfeiture, or punishment as aforesaid.

32. Nothing in this act contained shall subject to forfeiture any commissioned ship of any foreign state, or give to any British court over and in respect of any ship entitled to recognition as a commissioned ship of any foreign state any jurisdiction which it would not have had if this act had not passed.

33. Nothing in this act contained shall extend or be construed to extend to subject to any penalty any person who enters into the military service of any prince, state, or potentate in Asia, with such leave or license as is for the time being required by law in the case of subjects of Her Majesty entering into the military service of princes, states, or potentates in Asia.

UNITED STATES LAWS.

AN ACT in addition to the "Act for the punishment of certain crimes against the United States."[1]—June 5, 1794.

SECTION 1. *Be it enacted and declared by the Senate and House of Representatives of the United States of America in Congress assembled*, That if any citizen of the United States shall, within the territory or jurisdiction of the same, accept and exercise a commission to serve a foreign prince or state in war, by land or sea, the person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than two thousand dollars, and shall be imprisoned not exceeding three years.

SEC. 2. *And be it further enacted and declared*, That if any person shall, within the territory or jurisdiction of the United States, enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince or state as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding three years: *Provided*, That this shall not be construed to extend to any subject or citizen of a foreign prince or state, who shall transiently be within the United States, and shall, on board of any vessel of war, letter of marque, or privateer, which, at the time of its arrival within the United States, was fitted and equipped as such, enlist or enter himself, or hire or
[39] retain another subject or citizen of the same *foreign prince or state, who is transiently within the United States, to enlist or enter himself to serve such prince or state on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such prince or state: *And provided further*, That if any person so enlisted shall, within thirty days after such enlistment, voluntarily discover, upon oath, to some justice of the peace, or other civil magistrate, the person or persons by whom he was so enlisted, so as that he or they may be apprehended and convicted of the said offense, such person, so discovering the offender or offenders, shall be indemnified from the penalty prescribed by this act.

SEC. 3. *And be it further enacted and declared*, That if any person shall, within any of the ports, harbors, bays, rivers, or other waters of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall, knowingly, be concerned in the furnishing, fitting out, or arming of any ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign prince or state, to cruise or commit hostilities upon the subjects, citizens, or property of another foreign prince or state with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be employed as aforesaid, every such person so offending shall, upon conviction, be adjudged guilty of a high misdemeanor, and shall be fined and imprisoned at the discretion of the court in which the conviction shall be had, so as the fine to be imposed shall in no case be more than five thousand dollars and the term of imprisonment shall not exceed three years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms,

[1] The act thus referred to is the act of April 30, 1790, providing for the punishment of high treason and other offenses against the state or individuals.

ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited, one-half to the use of any person who shall give information of the offense, and the other half to the use of the United States.

SEC. 4. *And be it further enacted and declared*, That if any person shall, within the territory or jurisdiction of the United States, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel, which, at the time of her arrival within the United States, was a ship of war, cruiser, or armed vessel in the service of a foreign prince or state, or belonging to the subjects or citizens of such prince or state, the same being at war with another foreign prince or state with whom the United States are at peace, by adding to the number or size of the guns of such vessel prepared for use, or by the addition thereto of any equipment solely applicable to war, every such person, so offending, shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be fined and imprisoned at the discretion of the court in which the conviction shall be had, so as that such fine shall not exceed one thousand dollars, nor the term of imprisonment be more than one year.

SEC. 5. *And be it further enacted and declared*, That if any person shall, within the territory or jurisdiction of the United States, begin or set on foot, or provide or prepare the means for any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state with whom the United States are at peace, every such person so offending shall, upon conviction, be adjudged guilty of a high misdemeanor, and shall suffer fine and imprisonment, at the discretion of the court in which the conviction shall be had, so as that such fine shall not exceed three thousand dollars, nor the term of imprisonment be more than three years.

SEC. 6. *And be it further enacted and declared*, That the district courts shall take cognizance of complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof.

SEC. 7. *And be it further enacted and declared*, That in every case in which a vessel shall be fitted out and armed, or attempted so to be fitted out or armed, or in which the force of any vessel of war, cruiser, or other armed vessel shall be increased or augmented, or in which any military expedition or enterprise shall be begun or set on foot, contrary to the prohibitions and provisions of this act; and in every case of the capture of a ship or vessel within the jurisdiction or protection of the United States as above defined, and in every case in which any process, issuing out of any court of the United States, shall be disobeyed or resisted by any person or persons having the custody of any vessel of war, cruiser, or other armed vessel, of any foreign prince or state, or of the subjects or citizens of such prince or state, in every such case it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be judged necessary, for the purpose of taking possession of, and detaining, any such ship or vessel, with her prize or prizes, if any, in order to the execution of the prohibitions and penalties of this act, and to the restoring such prize or prizes, in the cases in which restoration shall have been adjudged, and also for the purpose of preventing the carrying on of any such expedition or enterprise, from the

territories of the United States against the territories or dominions of a foreign prince or state with whom the United States are at peace.

SEC. 8. *And be it further enacted and declared*, That it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign ship or vessel to depart the United States, in all cases in which, by the laws of nations or the treaties of the United States, they ought not to remain within the United States.

SEC. 9. *And be it further enacted*, That nothing in the foregoing act shall be construed to prevent the prosecution or punishment of treason, or any piracy, defined by a treaty or other law of the United States.

SEC. 10. *And be it further enacted*, That this act shall continue and be in force for and during the term of two years, and from thence to the end of the next session of Congress, and no longer.[1]

Approved June 5, 1794.

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[40] AN ACT to prevent citizens of the United States from privateering against nations in amity with, or against citizens of, the United States.—June 14, 1797.[2]

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That if any citizen or citizens of the United States shall, without the limits of the same, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly aid or be concerned in the furnishing, fitting out, or arming any private ship or vessel of war, with intent that such ship or vessel shall be employed to cruise or commit hostilities upon the subjects, citizens, or property of any prince or state with whom the United States are at peace, or upon the citizens of the United States or their property, or shall take the command of or enter on board of any such ship or vessel for the intent aforesaid, or shall purchase an interest in any vessel so fitted out and armed with a view to share in the profits thereof, such person or persons so offending shall, on conviction thereof, be adjudged guilty of a high misdemeanor, and shall be punished by a fine not exceeding ten thousand dollars, and imprisonment not exceeding ten years; and the trial for such offense, if committed without the limits of the United States, shall be in the district where the offender shall be apprehended or first brought.

SEC. 2. *And be it further enacted*, That nothing in the foregoing act shall be construed to prevent the prosecution or punishment of treason or any piracy defined by a treaty or other law of the United States.

Approved June 14, 1797.

AN ACT more effectually to preserve the neutral relations of the United States.—March 3, 1817.[2]

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That if any person shall, within the limits of the United States, fit out and arm, or attempt

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[1] Continued for two years, &c., by act of March 2, 1797. Continued, without limitation of time, by act of April 24, 1800.

[2] Repealed by act of Congress of April 20, 1818.

to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming of any ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people to cruise or commit hostilities, or to aid or co-operate in any warlike measure whatever against the subjects, citizens, or property of any prince or state, or of any colony, district, or people with whom the United States are at peace, every such person so offending shall, upon conviction, be adjudged guilty of a high misdemeanor, and shall be fined and imprisoned at the discretion of the court in which the conviction shall be had, so as the fine to be imposed shall in no case be more than ten thousand dollars, and the term of imprisonment shall not exceed ten years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores which may have been procured, for the building and equipment thereof, shall be forfeited, one-half to the use of any person who shall give information, and the other half to the use of the United States.

SEC. 2. *And be it further enacted*, That the owners of all armed ships sailing out of the ports of the United States, and owned wholly or in part by the citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners in cruising or committing hostilities, or in aiding or co-operating in any warlike measure against the subjects, citizens, or property of any prince or state, or of any colony, district, or people with whom the United States are at peace.

SEC. 3. *And be it further enacted*, That the collectors of the customs be, and they are hereby, respectively authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart from the United States, of which the cargo shall principally consist of arms and munitions of war, when the number of men shipped on board or other circumstances shall render it probable that such vessel is intended to be employed by the owner or owners to cruise or commit hostilities upon the subjects, citizens, or property of any prince or state, or of any colony, district, or people with whom the United States are at peace, until the decision of the President be had thereupon, or until the owner enters into bond and sureties to the United States, prior to clearing out the same, in double the amount of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by the owner or owners in cruising or committing hostilities, or in aiding or co-operating in any warlike measure against the subjects, citizens, or property of any prince or state, or of any colony, district, or people with whom the United States are at peace.

SEC. 4. *And be it further enacted*, That if any person shall, within the territory or jurisdiction of the United States, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting the force of any ship of war, cruiser, or other armed vessel, which, at the time of her arrival within the United States, was a ship of war, cruiser, or armed vessel in the service of a foreign prince or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince, state, colony, district, or people, the same being at war with any foreign prince or state with whom the United States are at peace, by adding to the number or size of the guns of such vessels prepared for use, or by the addition thereto of any equipment solely applicable to war, every such person so offend-

ing shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be fined and imprisoned at the discretion of the court in
[41] which the conviction shall be had,* so as that such fines shall not exceed one thousand dollars, nor the term of imprisonment be more than one year.

SEC. 5. *And be it further enacted*, That this act shall continue in force for the term of two years.

Approved, March 3, 1817.

AN ACT in addition to the "Act for the punishment of certain crimes against the United States,"[1] and to repeal the acts therein mentioned.—April 20, 1818.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if any citizen of the United States shall, within the territory or jurisdiction thereof, accept and exercise a commission to serve a foreign prince, state, colony, district, or people, in war, by land or by sea, against any prince, state, colony, district, or people with whom the United States are at peace, the person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than two thousand dollars, and shall be imprisoned not exceeding three years.

SEC. 2. *And be it further enacted*, That if any person shall, within the territory or jurisdiction of the United States, enlist or enter himself, or hire or retain another person or enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding three years: *Provided*, That this act shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district, or people, who shall transiently be within the United States, and shall on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, enter and enlist himself, or hire or retain another subject or citizen of the same foreign prince, state, colony, district, or people, who is transiently within the United States, to enlist or enter himself to serve such foreign prince, state, colony, district, or people, on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people.

SEC. 3. *And be it further enacted*, That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming, of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be employed as aforesaid,

[1] "An act for the punishment of certain crimes against the United States," April 30, 1790, ch. 9.

every person so offending shall be guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer and the other half to the use of the United States.

SEC. 4. *And be it further enacted*, That if any citizen or citizens of the United States shall, without the limits thereof, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly aid or be concerned in the furnishing, fitting out, or arming, any private ship or vessel of war, or privateer, with intent that such ship or vessel shall be employed to cruise or commit hostilities upon the citizens of the United States or their property, or shall take the command of, or enter on board of any such ship or vessel for the intent aforesaid, or shall purchase any interest in any such ship or vessel with a view to share in the profits thereof, such person so offending shall be deemed guilty of a high misdemeanor, and fined not more than ten thousand dollars, and imprisoned not more than ten years; and the trial for such offense, if committed within the limits of the United States, shall be in the district in which the offender shall be apprehended or first brought.

SEC. 5. *And be it further enacted*, That if any persons shall, within the territory or jurisdiction of the United States, increase or augment, or procure to be increased or augmented, or shall knowingly be concerned in increasing or augmenting the force of any ship of war, cruiser, or other armed vessel which at the time of her arrival within the United States was a ship of war, or cruiser, or armed vessel in the service of any foreign prince or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince, or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by the addition thereto of any equipment solely applicable to war, every person so offending shall be deemed guilty of a high misdemeanor, shall be fined not more than one thousand dollars, and be imprisoned not more than one year.

SEC. 6. *And be it further enacted*, That if any person shall, within the territory or jurisdiction of the United States, begin or set on foot, or provide or prepare the means for any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars, and be imprisoned not more than one year.

[12] * SEC. 7. *And be it further enacted*, That the district courts shall take cognizance of complaints, by whomsoever instituted, in cases of capture made within the waters of the United States, or within a marine league of the coasts or shores thereof.

SEC. 8. *And be it further enacted*, That in every case in which a vessel shall be fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser, or other armed vessel, shall be increased or augmented, or in which any military expedition or enterprise shall be begun or set on foot, contrary to the provisions and prohibitions of this act; and in every case of the capture

of a ship or vessel within the jurisdiction or protection of the United States as before defined, and in every case in which any process issuing out of any court of the United States shall be disobeyed or resisted by any person or persons having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, in every case it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such ship or vessel, with her prize or prizes, if any, in order to the execution of the prohibitions and penalties of this act, and to the restoring the prize or prizes in the cases in which restoration shall have been adjudged, and also for the purpose of preventing the carrying on any such expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace.

SEC. 9. *And be it further enacted*, That it shall be lawful for the President of the United States, or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign ship or vessel to depart the United States in all cases in which by the law of nations or the treaties of the United States they ought not to remain within the United States.

SEC. 10. *And be it further enacted*, That the owners or consignees of every armed ship or vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace.

SEC. 11. *And be it further enacted*, That the collectors of customs may be, and they are hereby respectively authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart the United States, of which the cargo shall principally consist of arms and munitions of war, when the number of men shipped on board, or other circumstances, shall render it probable that such vessel is intended to be employed by the owner or owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign state or of any colony, district, or people with whom the United States are at peace, until the decision of the President be had thereon, or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding section of this act.

SEC. 12. *And be it further enacted*, That the act passed on the 5th day of June, 1794, entitled "An act in addition to the act for the punishment of certain crimes against the United States," continued in force, for a limited time, by the act of the 2d of March, 1797, and perpetuated by the act passed on the 24th of April, 1800, and the act passed on the 14th day of June, 1797, entitled "An act to prevent the citizens of the United States from privateering against nations in amity with, or against the citizens of, the United States," and the act passed the 3d day of March, 1817, entitled "An act more effectually to preserve the neutral relations of the United States," be, and the same are hereby,

severally repealed: *Provided, nevertheless*, That persons having heretofore offended against any of the acts aforesaid may be prosecuted, convicted, and punished as if the same were not repealed; and no forfeiture heretofore incurred by a violation of any of the acts aforesaid shall be affected by such repeal.

SEC. 13. *And be it further enacted*, That nothing in the foregoing act shall be construed to prevent the prosecution or punishment of treason or any piracy defined by the laws of the United States.

AN ACT supplementary to an act entitled "An act in addition to the act for the punishment of certain crimes against the United States, and to repeal the acts therein mentioned," for the prevention of American armed expeditions against certain foreign territories (in Canada) conterminous with those of the United States.—March 10, 1838.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the several collectors, naval officers, inspectors of customs, the marshals, and deputy marshals of the United States, and every other officer who may be specially empowered for the purpose by the President of the United States, shall be, and they are hereby, respectively authorized and required to seize and detain any vessel or any arms or munitions of war which may be provided or prepared for any military expedition or enterprise against the territory or dominions of any foreign prince or state, or of any colony, district, or people conterminous with the United States, and with whom they are at peace, contrary to the sixth section of the act passed on the 20th of April, 1818, entitled "An act in addition to the act for the punishment of certain crimes against the United States, and to repeal the acts therein mentioned," and
[43] retain possession of the same *until the decision of the President be had thereon, or until the same shall be released as hereinafter directed.

SEC. 2. *And be it further enacted*, That the several officers mentioned in the foregoing section shall be, and they are hereby, respectively authorized and required to seize any vessel or vehicle, and all arms or munitions of war, about to pass the frontier of the United States for any place within any foreign state or colony, conterminous with the United States, where the character of the vessel or vehicle, and the quantity of arms and munitions, or other circumstances, shall furnish probable cause to believe that the said vessel or vehicle, arms or munitions of war, are intended to be employed by the owner or owners thereof, or any other person or persons, with his or their privity, in carrying on any military expedition or operations within the territory or dominions of any foreign prince or state, or any colony, district, or people conterminous with the United States, and with whom the United States are at peace, and detain the same until the decision of the President be had for the restoration of the same, or until such property shall be discharged by the judgment of a court of competent jurisdiction: *Provided*, That nothing in this act contained be so construed as to extend to or interfere with any trade in arms or munitions of war, conducted in vessels by sea with any port or place whatsoever, or with any other trade which might have been lawfully carried on before the passage of this act, under the law of nations and the provisions of the act hereby amended.

SEC. 3. *And be it further enacted*, That it shall be the duty of the offi-

cer making any seizure under this act, to make application, with due diligence, to the district judge of the district court of the United States within which such seizure may be made, for a warrant to justify the detention of the property so seized; which warrant shall be granted only on oath or affirmation, showing that there is probable cause to believe that the property so seized is intended to be used in a manner contrary to the provisions of this act; and if said judge shall refuse to issue such warrant, or application therefor shall not be made by the officer making such seizure within a reasonable time, not exceeding ten days thereafter, the said property shall forthwith be restored to the owner. But if the said judge shall be satisfied that the seizure was justified under the provisions of this act, and issue his warrant accordingly, then the same shall be detained by the officer so seizing said property, until the President shall order it to be restored to the owner or claimant, or until it shall be discharged in due course of law, on the petition of the claimant, as hereinafter provided.

SEC. 4. *And be it further enacted*, That the owner or claimant of any property seized under this act may file his petition in the circuit or district court of the United States in the district where such seizure was made, setting forth the facts in the case; and thereupon such court shall proceed, with all convenient dispatch, after causing due notice to be given to the district attorney and officer making such seizure, to decide upon the said case, and order restoration of the property, unless it shall appear that the seizure was authorized by this act; and the circuit and district courts shall have jurisdiction, and are hereby vested with full power and authority, to try and determine all cases which may arise under this act; and all issues in fact arising under it shall be decided by a jury in the manner now provided by law.

SEC. 5. *And be it further enacted*, That whenever the officer, making any seizure under this act, shall have applied for and obtained a warrant for the detention of the property, or the claimant shall have filed a petition for its restoration, and failed to obtain it, and the property so seized shall have been in the custody of the officer for the term of three calendar months from the date of such seizure, it shall and may be lawful for the claimant or owner to file with the officer a bond to the amount of double the value of the property so seized and obtained, with at least two sureties, to be approved by the judge of circuit or district court, with a condition that the property, when restored, shall not be used or employed by the owner or owners thereof, or by any other person or persons, with his or their privity, in carrying on any military expedition or operations within the territory or dominions of any foreign prince or state, or any colony, district, or people conterminous with the United States, with whom the United States are at peace; and thereupon the said officer shall restore such property to the owner or claimant thus giving bond: *Provided*, That such restoration shall not prevent seizure from being again made, in case there may exist fresh cause to apprehend a new violation of any of the provisions of this act.

SEC. 6. *And be it further enacted*, That every person apprehended and committed for trial for any offense against the act hereby amended, shall, when admitted to bail for his appearance, give such additional security as the judge admitting him to bail may require, not to violate nor aid in violating, any of the provisions of the act hereby amended.

SEC. 7. *And be it further enacted*, That whenever the President of the United States shall have reason to believe that the provisions of this act have been, or are likely to be, violated, that offenses have been, or are likely to be, committed against the provisions of the act hereby

amended, within any judicial district, it shall be lawful for him, in his discretion, to direct the judge, marshal, and district attorney of such district to attend at such place within the district, and for such time as he may designate, for the purpose of the more speedy and convenient arrest and examination of persons charged with the violation of the act hereby amended; and it shall be the duty of every such judge, or other officer, when any such equisition shall be received by him, to attend at the place and for the time therein designated.

SEC. 8. *And be it further enacted*, That it shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as shall be necessary to prevent the violation, and to enforce the due execution of this act and the act hereby amended.

SEC. 9. *And be it further enacted*, That this act shall continue in force for the period of two years, and no longer.

[Approved March 10, 1838.]

[45] *MEMORANDUM RESPECTING REPRESENTATIONS MADE BY MR. ADAMS OF BREACHES OF NEUTRALITY DURING THE CIVIL WAR.[1]

Memorandum on Mr. Adams's representations during the civil war.

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1. BERMUDA.

August 15, 1861.

Letter acknowledged and referred to Treasury, August 15.

North America, No. 1, 1861, pp. 69, 70.

Steamer said to be fitting out for confederates at Hartlepool. Not a case for interference. Proved to be a blockade-runner.

2. SUMTER.

September 30, 1861.

Complaint of the Sumter having been acknowledged as a ship of war at Trinidad by the governor and the captain of Her Majesty's ship Cadmus.

North America, No. 1, 1861, pp. 87–91.

The circumstances had been already reported, and the opinion of the law-officers taken, (*September* 16,) who decided that no irregularity had been committed. Mr. Adams was informed accordingly.

The Sumter had run the blockade of the Mississippi, whence she went to Puerto Cabello, and then to Trinidad. She was afterward laid up at Gibraltar, where she was watched by the United States steamer Tuscarora. While at Gibraltar the captain was assassinated by the lieutenant. The ship was dismantled and sold to a British firm in December, 1862, and came to Liverpool. Her proceedings there occasioned a subsequent correspondence.

3. ESTABLISHMENT OF A CONFEDERATE DEPOT AT NASSAU.

October 1, 1861.

Letter acknowledged and referred to colonial office, October 8.

North America, No. 1, pp. 117, 118.

The allegations in Mr. Adams's letter were denied by Mr. H. Adderley, the person who was stated to have the shipment of the supplies, and Mr. Adams expressed his satisfaction at the denial. (*Mr. Adams, January* 19, 1862.)

4. NASHVILLE.

November 22, 1861.

Acknowledged and referred to law-officers, November 23.

North America. No. 6: Tuscarora and Nashville.

This was a complaint of the confederate steamer Nashville having been permitted to enter Southampton after destroying the American bark Harvey Birch.

The Nashville, which had escaped from Charleston, proved to be regularly commissioned as a ship of war, and was, under the advice of the law-officers, acknowledged accordingly.

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[1] Reprinted from inclosure in Lord Russell's letter to Mr. Adams, of November 3, 1865. (Parliamentary Papers, North America, No. 1, 1866, p. 139.)

For correspondence as to the proceedings of the Nashville and United States steamer Tuscarora, at Southampton, see Parliamentary papers presented 1862.

5. ORETO, OR FLORIDA.

February 18, 1862.

Acknowledged and referred to treasury, February 18.

Alleged to be fitting at Liverpool for the confederate service.

The customs officers reported that she was intended for a merchant-vessel, and was stated to be going to Italy. No proof was forthcoming of her equipment, and she sailed, March 22, without any armament on board. On arriving at Nassau she was seized by Her Majesty's ship Greyhound for violation of foreign-enlistment act. The case was tried in the vice-admiralty court, and the ship released August 2, 1862. She then ran the blockade of Mobile, and, having armed there, escaped again as the Florida ship of war, under the command of Captain Maffit.

Her career continued until her seizure in the harbor of Bahia by the United States ship Wachusett, in October, 1864.

[46] **Reference to foreign-enlistment act.*

In the second representation made by Mr. Adams, March 25, 1862, the following passage occurs, which, as being the first reference to the operation of the foreign enlistment act, may be worthy of remark:

Mr. Adams, March 25, 1862.

It is with the deepest regret that the President directs me to submit to Her Majesty's government a representation of the unfortunate effect produced upon the minds of the people of the United States from the conviction that nearly all of the assistance that is now obtained from abroad by the persons still in arms against their government, and which enables them to continue the struggle, comes from the Kingdom of Great Britain and its dependencies. Neither is this impression relieved by the information that the existing municipal laws are found to be insufficient, and do not furnish means of prevention adequate to the emergency.

6. BLOCKADE-RUNNERS LADEN IN ENGLAND.

March 10, 1862.

Letter acknowledged March 13. Referred to law-officers March 12, who decided (*March* 22) that Her Majesty's government could not interfere.

7. EMILY ST. PIERRE.

April 24, 1862.

Acknowledged and referred to law-officers, April 24.

A blockade-runner which, after capture, was rescued by her master and two men from the prize crew and brought to Liverpool.

Under the advice of law-officers Her Majesty's government refused to interfere.

8. ALABAMA.

June 23, 1862.

Acknowledged, referred to Treasury and law-officers, June 25.

A vessel known as the No. 290, building by Messrs. Laird at Liverpool. Law-officers reported (*June* 30) that there was not sufficient evidence to proceed on but that the vessel should be watched. The reports received from the customs were sent to Mr. Adams (*July* 4) with a suggestion that the United States consul at Liverpool should procure further

proofs of equipment, &c. Mr. Adams acknowledged and promised to act on this suggestion, (*July* 7.) He sent further depositions accordingly, (*July 22 and* 24,) and accompanied the latter letter by an opinion of Mr. Collier in favor of seizure. The law-officers reported (*July* 29) that she should be seized; but on the morning of the 29th she had sailed from the Mersey, under pretext of a trial trip. A copy of the law-officers' opinion was sent to the Bahamas in the case of the Alabama going there. She, however, proceeded to Angra Bay, Azores, where she met the Bahama and Agrippina, with her armament, her commander, Captain Semmes, and forty-two seamen. She then hoisted the confederate flag, and sailed for Port Royal, Martinique, next to Blanco Island (belonging to Venezuela) where she coaled, then to Arcas Keys, then destroyed the United States ship Hatteras, off Galveston, and afterwards to Jamaica, where she was received and recognized as a regularly commissioned ship of war.

She continued her depredations at the Cape of Good Hope and elsewhere, until she was finally sunk by the United States ship Kearsarge, off Cherbourg, June 19, 1864.

Naval reserve men dismissed for engaging on board Alabama.

It having been found that four naval reserve men had sailed in the Alabama, on her first start, their names were erased from the naval reserve list. (*Admiralty, February* 27, 1863.)

9. HECTOR.

November 17, 1862.

Referred to admiralty, November 18.

This was an inquiry whether the Hector was building for Her Majesty's government; and, after reference to the admiralty, was answered in the affirmative.

10. THE GEORGIANA.

January 16, 1863.

Acknowledged and referred to treasury and home office, January 17.

Said to be fitting at Liverpool for confederates, though Mr. Adams could not divulge the authority on which the statement was made.

The reports from the customs sent to Mr. Adams on the 18th, 19th, and 27th January, went to show that the vessel was not for war purposes.

She sailed on the 21st January for Nassau, and was wrecked in attempting to enter Charleston, March 19, 1863.

11. CONFEDERATE AGENCY IN ENGLAND.

February 9, 1863.

Acknowledged February 12; referred to law-officers, treasury, and home office, February 23.

[47] *This was the case of the intercepted correspondence.

Answered March 9; no cause to interfere.

12. SUMTER, OR GIBRALTAR, AT LIVERPOOL.

February, 16, 1863.

North American, No. 8, 1863.

Referred to law-officers, February 17.

After her sale at Gibraltar (see No. 2) the Sumter's name was changed

to the Gibraltar. Mr. Adams complained of her being refitted for confederate service. The law-officers reported March 3, and Mr. Adams was informed March 9 that there was no case for interference.

It appeared that guns were shipped on board the Gibraltar, but they proved to be siege-guns. She was wrecked in attempting to enter Charleston in July.

13. PAYMENT OF MEN, LATE OF ALABAMA, IN ENGLAND. MESSRS. KLINGENDER'S AGENCY.

March 4, 1863.

Acknowledged and referred to law-officers, March 12, 1863, who decided that no offense had been committed.

14. PHANTOM AND SOUTHERNER.

March 26, 1863.

Acknowledged and referred to treasury and home office March 27, law-officers June 2.

Phantom fitting at Liverpool, Southerner at Stockton-on-Tees. Mr. Adams informed that there was no ground for interference, July 3.

Both vessels proved to be intended for blockade-runners.

15. ALEXANDRA.

March 30, 1863.

Acknowledged and referred to law-officers, treasury, and home-office, March 31, 1863.

Reports were received from the treasury on the 31st, and home-office April 1. On the 4th of April the law-officers advised seizure.

The trial ended in the discharge of the vessel, and the costs and damages having been compromised for £3,700, she was delivered to the owners. She was then sent to Nassau, where she was again tried on a similar charge of violation of "foreign-enlistment act," and again acquitted. She has remained there ever since, and is now known as the Mary.

16. THE VIRGINIA, OR JAPAN.

April 8, 1863.

Acknowledged and referred to home office and treasury, April 8.

When Mr. Adams complained, this vessel had already sailed from Greenock, on the 2d of April, for Alderney. Instructions were sent to the governor of Guernsey to have her watched. She did not, however, go to the Channel Islands, but went to the coast of France, where she met a small steamer, the Alar, of Newhaven, off Morlaix, and took from her her crew and equipment. She then apparently went into Cherbourg.

An explanation was furnished to Mr. Adams, April 21, and on the 30th of April the law-officers reported that no offense under the "foreign-enlistment act" had been committed by the Alar. The Virginia was subsequently known as the Georgia, and her arrival at Liverpool in 1864 occasioned a further correspondence.

17. IRON-CLADS AT LIVERPOOL.

July 11, 1863.

Acknowledged and referred to treasury, home-office, and law-officers, July 13.

These vessels, known as the El Mounassir and El Toussoon, and said to have been ordered of Messrs. Laird, of Birkenhead, by M. Bravay, for the Egyptian government, were seized and eventually purchased for Her Majesty's service.

18. CANTON, OR PAMPERO.

October 17, 1863.

Acknowledged and referred to treasury, home office, and admiralty, October 19.

This vessel, which was being constructed in the Clyde, nominally as a merchant-ship for the China trade, was, after inquiry, and under the advice of the lord advocate, seized and tried. The Crown took judgment by default, the case being undefended, and the vessel remained under seizure until the close of the war. (*Lord Advocate, October* 19, 1865.)

19. ALLEGED CONFEDERATE DEPOT AT BERMUDA.

November 3, 1863.

Acknowledged and referred to law-officers November 5, who reported (November 12) that there was no case for interference. Mr. Adams informed accordingly, November 27.

20. RAPPAHANNOCK.

November 28, 1863.

Acknowledged November 30; referred to home office, admiralty, treasury, and law-officers, November 29.

[48] *This vessel, formerly Her Majesty's ship Victor, had been sold by the admiralty to Messrs. Coleman, in October, but without masts or sails. (*From admiralty, October* 24; *to admiralty, October* 24.)

She sailed from Sheerness on the morning of the 25th of November in a very incomplete state, the riggers being still on board, and arrived at Calais on the 26th. These circumstances had already been reported when Mr. Adams's representation was received.

Prosecution of Mr. Rumball.

Mr. Rumball, the head of the outfitting and rigging department at Sheerness dock-yard, was prosecuted for his share in the transaction, but was acquitted on trial at the Queen's Bench on the 4th of February, 1865. He was, however, placed on half-pay. (*To Mr. Adams, March* 8, 1865.)

Intended prosecution of Messrs. Anson and Brown.

It was also intended to prosecute two other persons, seamen, for engaging men to serve in the Rappahannock, under the name of the Scylla, but the prosecution was not carried out, the men having, it is believed, absconded.

The Rappahannock remained at Calais until the conclusion of the war, when she was sold to a British firm and brought to England.

21. CONFEDERATE AGENCY AT LIVERPOOL.

December 7, 1863.

Acknowledged December 9; referred to law-officers December 9.

This was the case of Jones & Co., accused of enlisting men for confederate service.

The law-officers advised that J. Jones and R. Highat and their clerk Wilding, and another person named Maltman, should be proceeded against. (*Law-officers, December* 12, 1863.)

The home office accordingly proceeded against the two principals at the spring assizes; the case was removed by writ of *certiorari* to the Queen's Bench, where they were both convicted; but certain points were reserved for argument at the next term, and on the 23d of November, 1864, they were condemned to pay a fine of £50 each.

22. CAPTAIN CATOR.

December 29, 1863.

Acknowledged and referred to admiralty, December 30, 1863.

This was a complaint that an officer in Her Majesty's navy had been engaged in running the blockade. The admiralty reported that they had no knowledge of it, and could not interfere. (*December* 31, 1863.)

23. NAVAL RESERVE MEN ENLISTED FOR FLORIDA AND GEORGIA.

January 11, 1864.

Acknowledged January 13; referred to home office, January 13.

Three naval reserve men who were traced were struck off the list. (*Admiralty, January* 21.)

24. NAVAL RESERVE MEN IN ALABAMA.

January 13, 1864.

Acknowledged and referred to home office, January 14.

Mr. Adams sent a list of nineteen men said to belong to naval reserve; but of this number, only three could be traced as actually belonging to it. (*Admiralty, January* 29, *February* 18.)

25. WILL O' THE WISP.

February 22, 1864.

Acknowledged and referred to colonial office, February 25.

This vessel was said to be going to Bermuda to convey stores to the confederate government.

No case appeared for interference. (*Colonial office, May* 16, 1864.)

26. AMPHION.

March 18, 1864.

Acknowledged and referred to home office, March 18.

Said to be equipping for confederates.

Law-officers reported that no case was made out. (*Law-officers, March* 31.)

She was eventually sent to Copenhagen for sale as a merchant-ship.

27. HAWK.

April 16, 1864.

Acknowledged and referred to home office, lord advocate, and treasury, April 18.

Supposed to be building at Renfrew for confederates; nominal owner, Mr. Begbie.

The case had been already reported on by customs (*Treasury, April* 4,)

and the papers sent to the lord advocate. On the 13th of April she left the Clyde without a register, and came to Greenhithe. The law-officers decided (*April* 26) that there was no evidence to warrant detention, and the treasury were so informed May 6.

She proved to be a blockade-runner. (*Home office, January* 19, 1865.)

[49] *28. ENLISTMENTS FOR THE RAPPAHANNOCK.

April 16, 1864.

Referred to law-officers, April 18.

Four persons were charged with these enlistments, viz: Seymour, Cunningham, Buchanan, and Bradshaw. The law-officers recommended they should be prosecuted. (*Law-officers, April* 28.)

The three first were proceeded against by home office. (*Home office, July* 18, 1864, *August* 16, 1864.) Seymour pleaded guilty, and was discharged on recognizances to appear when called upon; Cunningham was tried and convicted, and similarly discharged on recognizances of £150; Buchanan pleaded guilty, and was similarly sentenced; Bradshaw was not prosecuted.

29. GEORGIA AT LIVERPOOL.

May 9, 1864.

Acknowledged and referred to law-officers, May 10.

This vessel, formerly the Virginia or Japan, (see No. 16,) arrived at Liverpool under confederate colors, and Mr. Adams complained of her reception in the character of a ship of war. It was, however, decided that she should be thus received. Soon afterward she was dismantled and sold to the British firm of Bates & Co., as a merchant-ship. Mr. Adams again complained (July 27, 1864) of her being refitted as a ship of war. This proved to be unfounded. Messrs. Bates sent her out to Portugal, but she was captured by the United States ship Niagara, off Lisbon, and taken to the United States as a prize.

Customs notification against dismantling or selling belligerent ships in British ports.

The circumstances of this case gave rise to the customs notification of the 11th of August, forbidding the ships of war of the belligerents in America from being dismantled or sold in British ports.

30. ENLISTMENTS FOR GEORGIA.

May 28, 1864.

Acknowledged June 1, and referred to home office June 1.

Prosecution of Campbell.

This was a complaint against a person named Campbell, of Liverpool. Under advice of law-officers, he was prosecuted by home office, (*Home office, June*, 16, 1864,) and pleaded guilty, and was discharged on recognizances of £150 to appear when called upon.

31. SHENANDOAH, OR SEA KING.

November 18, 1864.

Acknowledged November 19.

The case of this vessel had already been reported by Her Majesty's

consul at Teneriffe. The Sea King, a merchant-vessel of an Indian Trading Company, was sent to Funchal, where she was met at Desertas, off Funchal, on the 20th of October, by the Laurel, Captain Corbett, with armament and crew. The transshipment took place there, and the Laurel returned to England, having touched at Funchal, on the 30th of October.

Prosecution of Captain Corbett.

The law-officers recommended the prosecution of Captain Corbett for his share in inducing men to ship on board the Shenandoah. The home office instituted proceedings accordingly, (*Home office, December* 2, 1864,) and the case stands for trial next term.

32. CITY OF RICHMOND.

January 14, 1865.

Acknowledged January 16; referred to home office January 15, and to law-officers January 19.

This vessel was engaged, as was stated, to carry the crew of the Florida, who had come to England from Brazil, from London to Nassau. The law-officers reported that no case was made out. (*Law-officers, January* 20, 1865.)

33. VIRGINIA AND LOUISA AND FANNY.

January 30, 1865.

Acknowledged and referred to treasury, February 1, 1865.

Vessels said to be in course of equipment at London.

No case was established, and they both proved to be blockade-runners, as reported by the governor of the Bahamas, who had been instructed to watch their proceedings. (*Colonial office, April* 19 *and May* 11, 1865.)

34. HERCULES AND AJAX.

February 7, 1865.

Acknowledged and referred to treasury and home office, February 1 and 9.

Both vessels built in the Clyde.

Ajax first proceeded to Ireland, and was detained at Queenstown by the mutiny of some of the crew, who declared she was for the confederate service. She was accordingly searched, but proved to be only fitted as a merchant-ship. The governor of the Bahamas was instructed
[50] to watch her at *Nassau. On her arrival there she was again overhauled, but nothing suspicious discovered, and the governor reported that she was adapted, and, he believed, intended for a tug-boat.

The Hercules being still in the Clyde, inquiries were made by the customs there, who reported that she was undoubtedly a tug-boat, and a sister ship to the Ajax.

Upon receiving this report it was proposed to prosecute the informant, Smith, for perjury, but it was found necessary, for that purpose, to produce the original affidavit, of which Mr. Adams had only sent a copy. Mr. Adams was, accordingly, written to for it on the 28th of June last, but nothing has since been done in the matter.

Mr. Adams's representations may be divided into four classes:

Mr. Adams's representations.

1. Outfit of vessels for the confederate navy in British ports.
2. Reception of confederate war-vessels in British ports.
3. Enlistments for the confederate service.
4. Miscellaneous.

1. *Outfit of vessels for the confederate navy in British ports.*

1. Outfit of vessels for the confederate navy in British ports.

It will be seen, from the foregoing statement, that Mr. Adams complained of no less than nineteen vessels, viz:

Names of vessels complained of.

1. Bermuda.
2. Oreto, or Florida.
3. Alabama.
4. Georgiana.
5. Phantom.
6. Southerner.
7. Alexandra.
8. Virginia, or Japan, (Georgia.)
9, 10. Iron-clads.
11. Canton, or Pampero.
12. Rappahannock.
13. Amphion.
14. Hawk.
15. Shenandoah, or Sea King.
16. Louisa And Fanny.
17. Virginia.
18. Hercules.
19. Ajax.

Of these, five subsequently hoisted the confederate ensign:

Five vessels which were converted into ships of war.

Oreto, or Florida.
Alabama.
Virginia, or Japan.
Rappahannock.
Shenandoah.

The Oreto, or Florida, besides having been watched by the customs previously to her leaving England, was seized and tried at Nassau, and acquitted. She then ran into Mobile, took her armament on board, and through the negligence of the blockading ship, United States ship Oneida, (whose captain, Captain Preble, was dismissed the service in consequence,) succeeded in escaping, and issued on her career as a regularly commissioned ship of war, the Florida.

Oreto or Florida.

This vessel, therefore, cannot be said to have been equipped or fitted out in a British port, nor can the British home or colonial authorities be accused of any want of activity with regard to her.

The Alabama, it is true, succeeded in escaping by a trick on the morning of the very day on which she would have been seized. Her armament was taken on board off Terceira, and her first recognition as a confederate war-vessel was in a French (Port Royal, Martinique) and not a British port.

Alabama.

Virginia, or Japan. This vessel, it will have been observed, sailed before any information of her character had reached Her Majesty's government, and was, in fact, taking in her armament in French waters on the very day on which Mr. Adams's representation was dated.

Virginia, or Japan. (Georgia.)

The same thing occurred with regard to the Rappahannock, which

Rappahannock.

was at Calais on the 26th of November, 1863, Mr. Adams's representation not being received until the 28th. In this case, however, the precipitancy with which the vessel was dispatched, in an incomplete state, to avoid detention, prevented her ever being available for service, and, although she had the confederate flag flying when she entered Calais, she had neither guns nor ammunition on board.

Shenandoah, or Sea King.

The Shenandoah, or Sea King, escaped in a similar manner to the Virginia and Rappahannock; and the first intimation that was received of her proceedings was from Her Majesty's consul at Teneriffe, reporting the transfer of crew and armament to her from the Laurel, at the Desertas, off Funchal. In this case, indeed, had information been received in time, it is not probable that she could have been detained, as she was a regular trading-vessel, well known as the Sea King in the East India trade.

State of the case as regards these vessels.

In fact, as regards all these five vessels, the case may be shortly stated that, in three instances, information was not received in time for Her Majesty's government to take any measures of prevention; in one instance the vessel was equipped and armed in a confederate port; and in the remaining one the ship succeeded in baffling the vigilance of the authorities at the moment [51] of her intended *seizure. The Virginia, (Georgia,) the Alabama, and the Shenandoah, were alike armed and manned in foreign waters.

Not a single armed ship dispatched from any British port.

During the four years of the civil war, from 1861 *to* 1865, *not a single armed ship for the confederate service was dispatched from any port either of Great Britain or the British colonies; and only one vessel, the Alabama, which it would have been possible to detain, escaped for conversion into a cruiser.*

On the other hand, in looking at the preceding list, we see that four vessels were proceeded against in England, and thereby prevented from entering the confederate service, viz, the Alexandra, the two iron-clads, and the Canton, or Pampero.

Vessels proceeded against in England and at Nassau.

Although the prosecution of the first of these was not successful, it served to detain her for a long period; and a second prosecution, which was instituted at Nassau, has kept her under seizure until the end of the war; the iron-clads, the most formidable of all the intended cruisers were thus similarly detained, and eventually purchased to avoid further litigation, while the Canton, or Pampero, was condemned and remained in the hands of the Crown until the occasion for her seizure had passed.

Mr. Adams's information proved to be in all the other cases.

The remaining ten vessels, denounced by Mr. Adams, proved to be ordinary merchantmen, intended chiefly for running the blockade, which is not an offense amenable to the law.

To these cases may be added the alleged refit of the Sumter, at Liverpool, the report of which proved unfounded.

The list includes all the suspected vessels in British ports, with the exception of the two—the Almandares and Pinero—which were alleged, though not by Mr. Adams, to be equipping at Montreal. No case was made out. (*Colonial Office*, February 6, 1865.)

When the delay in seizing the Alabama is so severely criticised by Mr. Adams, it must be remembered that in the two preceding representations his information had proved to be erroneous, the Bermuda being evidently not intended for a ship of war, and the Oreto having been found innocent in a court of law. The latter was subsequently converted into a cruiser, but the readiness with which a merchant-vessel can be

made available for belligerent purposes has been shown by the fact that the most efficient blockading ships in the Federal Navy were captured blockade-runners.

2. *Reception of confederate vessels of war in British ports.*

2. Reception of confederate vessels of war in British ports.

Sumter. This vessel, the first that appeared in European waters, was, as stated in the memorandum, regularly commissioned and equipped, and sailed from the Mississippi. The Nashville was likewise of American origin, having sailed from Charleston. She had been intended to bring the confederate commissioners to England, but it appearing doubtful whether her tonnage would admit of her crossing Charleston Bar, they proceeded by another route. The first case of the destruction of a ship at sea, which was represented by Mr. Adams, arose out of the destruction of the Harvey Birch by the Nashville. He adduced it as a reason for her not being received in a British port.

Sumter.

Nashville.

Besides these two cruisers, the confederate government owned the Tuscaloosa, a prize of the Alabama, which was equipped and commissioned from the Alabama, and with regard to which a correspondence took place at the Cape of Good Hope. The Tallahassee, which escaped from Wilmington, and on her first cruise in six days is said to have destroyed fifty-four vessels. The Tallahassee was originally the blockade-runner Atalanta, and ended her career by being reconverted into a merchantman, the Chameleon, and brought to Liverpool. The Chickamauga, formerly the blockade-runner Edith, (*Colonial Office*, December 31, 1864,) whose history is obscure, as it does not appear where she sailed from, or what became of her. Besides these, there were one or two other small vessels, such as the Etta, or Retribution, which made short cruises from blockaded ports to the Bahamas and West Indian Islands.

Other confederate cruisers.

Tuscaloosa.

Tallahassee.

Chickamauga.

Retribution and others.

There was also the Olinde, or Stonewall, which sailed from Bordeaux, and which, had she been able to enter upon her career as a cruiser, would have been a most dangerous adversary.

Olinde.

It will be seen, therefore, that the principal confederate cruisers were not all of English origin; four of them having been regularly commissioned in confederate ports, Sumter, Nashville, Florida, and Tallahassee, and one, Stonewall, having sailed from a French port.

Consul Barrow, No. 6; February 4, 1865.

3. *Engagement of men for the confederate service.*

3. Engagement of men for the confederate service.

In each of these cases, where evidence could be procured, prosecutions were instituted, and where men of the naval reserve could be traced, their names were erased from the naval-reserve list.

The cases represented were the following: Jones & Co., engagement of naval-reserve men on board the Florida, Georgia, and Alabama; Campbell, of Liverpool; and enlistments for the Rappahannock.

Names of cases.

4. *Miscellaneous.*

4. Miscellaneous.

Under this head come the representations respecting the alleged confederate depots at Nassau and Bermuda; the proceedings of confederate

List of cases. agents in England; the lading of blockade-runners in England; Emily St. Pierre; confederate agency; payment of Alabama seamen; Captain Cator's employment in blockade-running; the shipment of stores for the confederate government in the Will o' the Wisp; the conveyance of the Florida seamen to Nassau in the City of Richmond; the reception of the converted Sumter, or Gibraltar, at Liverpool, and the sale and conversion of the Georgia there.

In none of these cases could Her Majesty's government interfere.

52] *Summary of steps taken by Her Majesty's government.*

Summary of steps taken by Her Majesty's government. The following is a summary of the steps taken by Her Majesty's government to prevent or punish breaches of the Queen's neutrality:

Proceedings taken with regard to vessels. *Proceedings taken with regard to vessels.*

Five prosecuted—

1. Oreto, at Nassau.
2. Alexandra, in England and at Nassau.

North America, No. 3, 1863, pp. 11, 12. 3, 4. Iron-clads.

5. Canton, or Pampero.

Also orders given to detain the Alabama, had she touched at Queenstown or Nassau after her evasion from Liverpool.

The governor of the Bahamas was likewise instructed to watch other vessels, regarding which representations had been made, as the Louisa Ann Fanny, &c.

Prosecutions for the engagement of men for the confederate service.

Prosecutions for enlistments. 1. Mr. Rumball, (Rappahannock,) acquitted.

3. Jones and Highat, (Georgia and Florida,) convicted.
3. Campbell, (Georgia, convicted.)
4. Seymour, Cunningham, and Buchanan, (Rappahannock,) convicted.
5. Captain Corbett, (Shenandoah,) case pending.

When it was found that such vessels as the Rappahannock and Amphion, although useless to Her Majesty's navy, might be reconverted into confederate cruisers, instructions were given that no more ships should be sold out of Her Majesty's navy.

Moreover, when Captain Osborne's fleet returned from China, and it was feared the vessels composing it might fall into confederate hands, Her Majesty's government interposed both in India and in England to prevent their sale.

When the sale and conversion of the Georgia was complained of a customs notification was published forbidding vessels of war to be sold and dismantled in British ports.

Finally, as we have been shown by the preceeding statement, every representation of Mr. Adams was considered immediately on its receipt, and referred, when requisite, to the law-officers or other departments of Her Majesty's government, without even a day's delay.

FOREIGN OFFICE, *October* 30, 1865.

SUMMING-UP OF THE LORD CHIEF BARON, JUNE 24, 1863.

Summing up in the case of the Alexandra.

LORD CHIEF BARON. Gentlemen of the jury: This is an information on the part of the Crown, following a seizure by some officers of the government taking possession of a vessel which was in the course of building at Liverpool. It had not been completed. It is admitted that it was not armed; and the question is, whether the condition of the vessel falls within the foreign-enlistment act, as to which, upon all questions of fact, you will exercise your own right of deciding.

Gentlemen, the information is exceedingly long, containing some ninety counts, and the way in which that arises is this. The seventh clause of the act of Parliament speaks of its being unlawful to equip, to furnish, to fit out, or to arm a vessel. Then there are counts charging the defendants first with furnishing, then with equipping, then with fitting out, but not with arming. Then the various forms in which the endeavor, the attempt, the being concerned, and so on can be put, are all repeated over again with every variety of the equipping, furnishing, fitting out, and so on. And in that way the counts are swelled out to the number of ninety. But they all come at last to this question: Was this vessel, as then prepared, at the time of the seizure, under the act in question?

The case you have to decide on the present occasion is no doubt one not merely of great importance, but really is a momentous question. It is a question the importance of which it is impossible to exaggerate, and which one approaches with varied sentiments. One certainly has a feeling of the deepest regret that such a question should ever have arisen, and I cannot help expressing the deepest sorrow, almost anguish, that one feels that such a question should have arisen by dissension among those who are connected with us by the dearest possible ties that can bind nation to nation; a common lineage, a common language, common laws, and a common literature, and above all—I say above all these—a strong desire for constitutional freedom.

But, gentlemen, passing from that which really is a matter of feeling, which it is impossible not to entertain, and entertaining not to express, let us go at once to the business of the moment.

The charge is only that there should be a condemnation of the vessel as being properly seized; but that seizure necessarily involves the commission of a misdemeanor. And then the inquiry is and must be, Was a misdemeanor committed under the terms of the act of Parliament? If there was, and if the ship has been seized in consequence of that misdemeanor, the information is right, and your verdict must be for the Crown. If there was not, (and I shall presently state to you what appears to me to be the question of fact you have to try,) then the information founded upon the seizure ought to have a different termination, and your verdict ought to be for the defendants.

Gentlemen, I am rather disposed to agree with what fell from Sir

Hugh Cairns as to the line which is to be taken with respect to the charge, which unquestionably involves a charge of crime. The learned attorney-general is quite right in saying that there are occasions where, upon facts being proved to which no answer is given, the verdict may very well be for the Crown in an accusation of a certain kind. I do not think it necessary to go into any particulars, or to cite examples, or to do anything more than to say that such may be the case. But, generally speaking, there can be no doubt it is in this country, and I hope it will continue to be so, the privilege of the accused to stand out and say, "Prove whatever you allege against me, and do not call on me to disprove it." And so far as you have to deal with facts, and to come to conclusions satisfactorily in your judgments, no doubt you may act on the unsupported testimony of not very creditable witnesses, if, under the circumstances, you believe them. On the other hand, you ought to be thoroughly persuaded of the truth of what involves an accusation of crime, although it takes only the character of the seizure of a vessel.

Gentlemen, I for one must protest against the doctrine that no one is to be convicted of any crime if there is any possible solution of the circumstances by the imagination of his innocence. We might just as well shut up courts of criminal justice if that were to be the rule. Neither property nor life would have any protection if that were so. But there must be, in my judgment, at all times before conviction takes place, that sober satisfactory persuasion that the truth is a verdict of guilty which a man would have in the conduct of his own most important concerns. To say that it is free from doubt is to take it out of the ordinary category of human affairs. There is nothing free from doubt. The clearest testimony of all the witnesses, the most respectable that ever were congregated, may be the result of systematic perjury. But you cannot assume that, so as to get rid of testimony as to which no man entertains a doubt. It seems to me, therefore, gentlemen, that neither are you to take the extreme case which some persons contend for in the case of murder, that if there be the least shadow of any doubt whatever you are to acquit the prisoner. Not so. There must be a grave doubt, and no doubt you must have a thorough persuasion and satisfaction with respect to guilt before you can convict; undoubtedly that persuasion must be arrived at in the manner described by the learned solicitor-general, and I cannot do better than express myself in the manner in which he did in the * House of Commons in the now celebrated and able speech which he made, and which we have all read. It must be by proof, and not by suspicion; and in that point of view no doubt the question that might be raised before you would, in point of fact, be this: Are certain parts of the case matters of mere grave suspicion, or are they accompanied by such persuasions of the truth of the facts suggested or stated as to lead you to be satisfied that they did occur? Now, gentlemen, with these observations I will go at once to the statute in question, and to points of fact which I think I ought to submit to you.

[54]

Gentlemen, that statute is one which was passed in the year 1819, upon which no question has ever arisen in our courts of justice, and it is here before you for the first time. But it so happens that we have expositions of the statute by decisions in the American courts, which we very justly pay the greatest respect to; for two of the most celebrated writers upon law—Mr. Chancellor Kent and Mr. Justice Story—are Americans, and they have contributed certainly more to render law a science, and to render the pursuit of it, I was almost going to say

captivating, than any writers on this side of the Atlantic for thirty or forty years past.

Now I find in the Commentaries of Chancellor Kent this statement. He says that on a certain occasion it was contended, on the part of the French nation, that neutral governments were bound to restrain their subjects from selling or exporting articles contraband of war to the belligerent powers; but it was satisfactorily shown, on the part of the United States, that neutrals may lawfully sell at home to a belligerent purchaser, or carry themselves to the belligerent powers, contraband articles subject to the right of search *in transitu*. This right has since been explicitly declared by the judicial authorities of this country. The right of the neutral to transport, and of the hostile power to seize, are conflicting rights, and neither party can charge the other with a criminal act. The cases that are referred to in the note are those very cases that have been mentioned at the bar; two of them by Sir Hugh Cairns, and another, I think, by the learned attorney-general.

Gentlemen, that is the expression of Chancellor Kent in his Commentaries upon American law, which are very well worth reading by anybody who cares to study law at all, even English law, because they contain unquestionably one of the best and ablest—not the worse for being the shortest—account of the belligerent rights and the right of nations in the very beginning of Chancellor Kent's Commentaries.

Now, in the case of the Independencia, Mr. Justice Story, in giving the judgment of the Supreme Court of the United States, says thus: "But there is nothing in our law or in the law of nations that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign parts for sale. It is a commercial adventure, which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation."

These, gentlemen, are authorities which show that where two belligerents are carrying on war, the subject of a neutral power may supply to either, without any breach of international law, and certainly without any breach of the foreign-enlistment act, (and it does not say a word about it,) all the munitions of war, gunpowder, every description of fire-arms, cannon, every kind of weapon; in short, whatever can be used in war for the destruction of human beings who are contending together in this way. Well, gentlemen, why should ships be an exception? In my opinion, in point of law, they are not. Presently, I shall have to put to you the question of fact about the Alexandra, which you will decide. The foreign-enlistment act it is now necessary for me to advert to, in order to tell you what is the construction which I put on the seventh section, which alone we have to do with on the present occasion. Now the title of the act, "To prevent the enlisting or engagement of His Majesty's subjects to serve on foreign service, and to prevent," (the word is not repeated, but I do so to make the matter clear,) "and to prevent the fitting out or employing in His Majesty's dominions vessels for warlike purposes without His Majesty's license." And then I advert to the preamble. The title to an act of Parliament is not part of the statute, and I believe it is generally held by all lawyers that, properly speaking, it throws no light upon it. You cannot refer to it, for the title is, I believe, only put to the act after it has passed. I think that is the general rule. Therefore you cannot look to something which is put to it after it has passed for any explanation of what has gone before. But the preamble, which is part of the act, is this: "Whereas the enlisting," and so on, "and the fitting out and equipping and arming of vessels by

His Majesty's subjects without his license, for warlike operations in or against the dominions or territories of any foreign power, &c., is and may be prejudicial to and tend to endanger the peace and welfare of the community; and whereas the laws in force are not sufficient to prevent the same."

And then comes the seventh section, which I pass to at once, as really being the only matter in the act we have to deal with. We have nothing to do with enlisting or anything of the kind. The seventh section is as follows: "And be it further enacted, that if any person within any part of the United Kingdom, or in any part of His Majesty's dominions beyond the seas, shall, without the leave and license of His Majesty for the purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavor to equip, furnish, fit out, or arm, and procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming, any ship or vessel with intent or in order that such ship or vessel shall be employed in the service of any foreign prince," and so on, that person is guilty of a misdemeanor, is liable to fine and imprisonment, and the vessel is forfeited and may be seized.

Now, gentlemen, the question that I shall propose to you is this, whether you think that this vessel was merely in the course of building for the purpose of being delivered in pursuance of a contract, which I own I think was perfectly lawful; or whether there was any intention that in the port of Liverpool, or any other English port, (and there is certainly no evidence of any other,) the vessel should be equipped, fitted out, and furnished, or armed for the purpose of aggression. That is the question.

Now, with respect to the question of building, it is certainly remarkable that there is not a word said about it. It is not said that you may not build vessels for the belligerent powers. There is
[55] *nothing suggested of the kind, and clearly by the common law and by the passages I have read to you, surely if from Birmingham either state may get any quantity of destructive instruments of war, and if from the various parts of the kingdom where gunpowder is made they can obtain any quantity of that destructive material, why should they not get ships? Why should ships alone be themselves contraband?

Now, gentlemen, I will state to you why I put the question I did to the attorney-general. I said, do you mean to say that a man cannot make a vessel intending to sell it to either of the belligerent powers that requires to have it, to that one which will give him the largest price for it? Is that unlawful? The learned attorney-general, I own, rather to my surprise, declined giving an answer to a question which I thought very plain and very clear. You saw what passed; I must leave you to judge whether there was anything improper in the manner in which I (so to express it) communed with the attorney-general on the law, so that we might really understand each other, and that I might have my mind instructed, fitted out, equipped, and furnished, if you please, by the contents of his. Gentlemen, the learned attorney-general declined to answer that question. But, I think, by this time, having read to you these matters, you are lawyers enough to answer it yourselves. I think that answer ought to be, "Yes, a man may make a vessel." Nay, more, according to the authority I have just read, he may make a vessel and arm it, and then offer it for sale. So Story lays down.

But I meant, gentlemen, as I said then, if I had got an affirmative answer to that question, to put another. If any man may build a vessel for the purpose of offering it to either of the belligerent powers who

is minded to have it, may he not execute an order for it? Because it seems to me to follow, as a matter of course, if I may make a vessel and then say to the United States, "I have got a capital vessel; it can easily be turned to a ship of war; of course, I have not made it a ship of war at present: will you buy it?" If that is perfectly lawful, surely it is lawful for the United States to say, "Make us a vessel of such and such description, and when you have made it, send it to us." Now, the learned counsel certainly addressed themselves very much to this view of the matter. It was said, but if you allow this, you repeal the statute. Gentlemen, I think nothing of the kind. What that statute meant to provide for was, I own, I think, by no means the protection of the belligerent powers. I do not think their protection entered into the heads of those who framed this statute. Otherwise they would have said, you shall not sell gunpowder, you shall not sell guns. There are places that now and then explode in different parts of the kingdom, and which would have complained very heartily if they had said, you shall not sell gunpowder, you shall not sell arms. Why all Birmingham would have been in arms. But the object of this statute was this: We will not have our ports in this country subject to, possibly, hostile movements; you shall not be fitting up at one dock a vessel equipped and ready, not being completely armed, but ready to go to sea, and at another dock close by be fitting up another vessel, and equipping it in the same way, which might come into hostile communication immediately, possibly before they left the port. It would be very wrong if they did so, but it is a possibility. Now and then it has happened, and that has been the occasion of this statute.

Well, if that be so, let us see what is the condition of this vessel. The vessel was clearly nothing more than in the course of building. I do not know what conclusion you would come as to what service she was intended for. If it became a matter of importance to decide that, it would be a question for you to decide whether it amounted to more than a strong suspicion, or whether it was so made out to your entire satisfaction as to justify a verdict in that direction. But, gentlemen, I do not propose to put that to you; nor do I think it worth while to follow the learned attorney-general through the whitewashing of Clarence Randolph Yonge; because, after all, what he proved seems to me to have the least possible connection with, or effect upon, the real question in this case, which I take to be this, Was the vessel built, or was it merely in course of building?

Now, gentlemen, I present the matter to you in another point of view. The offense against which this information is directed, is the "equipping, furnishing, fitting out, or arming." Gentlemen, I have looked, so that I might not go wrong, (as we have the advantage of having it here,) at Webster's American Dictionary, a work of the greatest learning, research, and ability. No one can complain that I refer to that. It appears there that "to equip" is to "furnish with arms." In the case of a ship especially it is to "furnish and complete with arms." That is what is meant by "equipping." "Furnish" is given in every dictionary as the same as "equip." "To fit out" is to "furnish and supply," as to fit out a privateer. And I own that my opinion is, that "equip," "furnish," "fit out," or "arm," all mean precisely the same thing. I do not mean to say that it is absolutely necessary, (and, I think, that the learned attorney-general is right in that,) it is not, perhaps, necessary that the vessels should be armed at all points; though it may be that the case cited from 6th Peter's Reports by the learned attorney-general, somewhat late in the day, is a case where the jury found that the vessel

was actually fitted out. They found so most properly, for she actually sailed away with the captain, who afterward turned her into a privateer, and she went away, in a great measure, fitted. The jury found that she was fitted. The question is, whether you think that this vessel was fitted. Armed she certainly was not; but was there an intention that she should be furnished, fitted, or equipped at Liverpool? Because gentlemen, I must say it seems to me that the Alabama sailed away from Liverpool without any arms at all, merely a ship in ballast, unfurnished, unequipped, unprepared, and her arms were put in at Terceira, not a port in Her Majesty's dominions. The foreign-enlistment act is no more violated by that than by any other indifferent matter that might happen about a boat of any kind whatever. Now, gentlemen, I do not know whether you desire me to go over the evidence.

The JURY. Quite unnecessary; quite unnecessary.

LORD CHIEF BARON. I think the most important evidence given is that of the commander, Inglefield, of whom both sides have spoken in the highest terms of approbation and respect. Captain Inglefield said this: "I am captain of Her Majesty's ship Majestic, at Liverpool. I have examined the Alexandra. The examination took place [56] subsequent to the seizure. She is principally teak, *strongly built; certainly not intended for merchandise." I do not think it has ever been pretended that she was intended for merchandise. "Might be used as a yacht; easily converted into a vessel of war." And, gentlemen, certainly I was pleased to observe the candor and fairness with which a man like Captain Inglefield spoke of the matter. Everybody else who came (so far as I remember) had to be cross-examined before they said anything about it being fit for a yacht. Captain Inglefield said it was probably as fit for a yacht as any vessel ever built—"easily convertible into a vessel of war, and her strength is sufficient for that purpose; she has complete accommodation for men and officers; as to stowage, she has only stowage sufficient for her crew, suppose her crew to be 32 men; she is capable of being converted into a man-of-war; but there are no guns or preparations for that; she is without any of those appurtenances which indicate any indication of guns being put on board; she might have two or three guns; probably she would carry three of various size; the bulwarks would be low in a man-of-war; these bulwarks were low, but not of the same description I have seen." Then he is cross-examined. "The vessel was fitted for a yacht; not capable of being used for merchandise, not room for cargo; there is no difference between its entries and those for a yacht." In short, what he makes out is, that she might have been built for a yacht or might have been built as a vessel capable of being convertible into a war-vessel. But the question is, was there any intention that in the port of Liverpool, or in any other port, she should be, in the language of the act of Parliament, either "equipped, furnished, fitted out, or armed" with the intention of taking part in any contest. That there was a knowledge that very likely she would be so applied, there can be no doubt, as there is when persons send powder. I take it for granted there are agents on both sides, one openly buying every munition of war, (and they have a right to do it, and the subjects of this country have the right to sell them,) and openly carrying them away; the others buying wherever they can, and probably endeavoring to break the blockade, or to smuggle in some way or other the same description of munitions of war. Gentlemen, if you think the object was to equip, furnish, fit out, or arm that vessel at Liverpool, then that is a sufficient matter. But if you think the object really was to build a ship in obedience to an order, and

in compliance with a contract, leaving it to those who bought it to make what use they thought fit of it, then it appears to me that the foreign-enlistment act has not been in any degree broken. I leave you to find your verdict, unless you wish me to read the evidence over to you.

The JURY. No, we do not wish that, my lord.

ATTORNEY-GENERAL. Before the jury give their verdict, perhaps your lordship would give us an opportunity of tendering a bill of exceptions to a portion of your lordships ruling.

LORD CHIEF BARON. I will accept any bill of exceptions you wish to tender.

ATTORNEY-GENERAL. Strictly speaking, it must be done before the verdict is given.

Sir HUGH CAIRNS. Anything in point of form we will dispense with. The convenient way would be to do it afterward, I suppose, from the notes of the charge.

The jury considered their verdict for a short time.

The ASSOCIATE. Have you agreed to your verdict, gentlemen?

The FOREMAN. Yes.

The ASSOCIATE. How do you find?

The FOREMAN. For the defendants.

THE ASSOCIATE. You find a verdict for the claimants?

The FOREMAN. A verdict for the defendants.

The ATTORNEY-GENERAL. Would your lordship allow me to hand up a very brief note, so that there may be no mistake? [*handing a paper to his lordship.*]

Sir HUGH CAIRNS. Perhaps your lordship will let us have a copy of it?

LORD CHIEF BARON. It need not be done now. You may wish to put it in some other shape. There will be no mistake about it.

The ATTORNEY-GENERAL. I was only anxious that we should quite understand what your lordship has ruled and laid down to the jury. That is very shortly stated.

LORD CHIEF BARON. I have no doubt that there is a very good note taken of what I have said. You have got here, "that the vessel was not intended to be fitted." It should be, "That the vessel was in course of building, for the purpose of performing the contract, and that there was no intention that she should be equipped or furnished, or armed, or fitted out at Liverpool."

The SOLICITOR-GENERAL. That was not what your lordship said.

LORD CHIEF BARON. Certainly it was.

The ATTORNEY-GENERAL. I understood your lordship to say that if the building was in fulfillment of a contract.

LORD CHIEF BARON. And it was not intended that she should be equipped, fitted out, and furnished and so on, at Liverpool.

The ATTORNEY-GENERAL. Then there are the other points, my lord.

LORD CHIEF BARON. Every question I put to the jury I put it in the language of the act of Parliament, that if it was not intended that she should be "equipped, furnished, fitted out, or armed" at Liverpool. I took special care of that.

The ATTORNEY-GENERAL. I think that is the point.

LORD CHIEF BARON. No, you have got here that if the vessel was not intended to be furnished.

The ATTORNEY-GENERAL. No, my lord, it is "furnished or fitted out."

The SOLICITOR-GENERAL. Your lordship said that the words were the same. That every one of the words required a warlike armament at Liverpool. That is the point.

LORD CHIEF BARON. Mr. Attorney-General, I will not bind you to what passes on the present occasion. There cannot be any doubt now. I cannot alter the thing, and I have no doubt that you have a very accurate note of what I have said.

The ATTORNEY-GENERAL. I only wish that we should have your lordship's concurrence now, while the matter is fresh in your lordship's recollection.

[57] LORD CHIEF BARON. It cannot be a question of recollection Depend upon it there is an accurate note of what I have said.

The ATTORNEY-GENERAL. Will your lordship allow me to send in a full note from the best materials that we can get?

LORD CHIEF BARON. Certainly.

Judgment in the case of the Alexandra.

JUDGMENT GIVEN IN THE COURT OF EXCHEQUER.

MONDAY, 11*th January*, 1864.

Present: The right honorable the Lord Chief Baron Pollock, Mr. Baron Bramwell, Mr. Baron Channell, Mr. Baron Pigott.

Judgment on motion to make rule nisi *for new trial absolute.*

LORD CHIEF BARON. This was an information against the ship Alexandra, charging that the defendants, with others, had been guilty of a violation of the foreign-enlistment act in respect to that vessel. The ship Alexandra had been built and partly rigged at Liverpool, and had been seized on the 6th of April by an officer of the customs, on the ground of a breach of the seventh section of the statute. The defendants claimed the ship, and pleaded that the ship was not forfeited. The information charged them with every possible violation of the act as to *equipping*, *furnishing*, and *fitting out*, but omitted to charge anything in respect of *arming*. The cause was tried before me on Monday the 22d of June, and three following days. The evidence for the Crown clearly established the warlike character of the vessel—it was not at all adapted for commerce, but was capable of being adapted for warlike purposes—and though it might have been used as a yacht, according to the evidence of Captain Inglefield, it was in all probability intended to be used by the so-called Confederate States as a vessel of war, when adapted for that purpose by *them*, (suitable equipments and fittings-up being furnished.) And if the making, in pursuance of an agreement or order for that purpose, with intention to sell and deliver to one of the belligerents the hull of a vessel *suitable for war*, *but unarmed*, and *not* equipped, furnished, or fitted out with anything which enabled her to *cruise or to commit hostilities*, *to do any warlike act whatever*, be a violation of the foreign-enlistment act, my direction to the jury was wrong in point of law; the verdict ought to have been for the Crown, and there ought to be a new trial: but if the commerce of this country in ships, whether ultimately for peace or war, is to continue, and provided a ship leaves the ports of this country in no condition to *cruise* or to *commit hostilities*, though she may be of a warlike character, there has been no violation of the statute, then the verdict was right. And in substance this is the question between the Crown and the defendants, stripped of all technicalities.

The condition in which the vessel (unfinished when she was seized) was intended to leave this country, was, perhaps, not perfectly clear, but there was no direct evidence that she was to be made, at Liverpool or in any other British port, fit to cruise or to commit hostilities. I told the jury, in substance, that the sale of a ship was, in my judgment, perfectly lawful, even of a ship so constructed as to be convertible into a ship of war; that the sale of arms and ammunition and every kind of warlike implement was not forbidden by any law, either international or municipal, and that I thought that a ship capable of being used for war might be made and sold, as well as sold, (if made,) provided she did not leave a port of this country either armed or equipped, or furnished or fitted out within the meaning of the statute; that is to say, with intent or in order to cruise or commit hostilities against a state or power with whom Her Majesty was not at war.

There was no direct evidence that the vessel was intended to be armed at any British port with intent, on the part of the defendants, or indeed of any one, to cruise or commit hostilities; indeed, there was no charge in the information on the subject of *arming* at all, and there was [58] no direct evidence of *any intention to equip, furnish, or fit out the ship with intent to cruise or commit hostilities according to what I think is the true meaning of the charge in the information. I, however, left the question to the jury in the terms of the act of Parliament, and upon this direction, with the evidence before them, the jury found a verdict for the defendants.

In Michaelmas term the attorney-general applied for a new trial, and obtained a rule to show cause, on the ground stated in the rule, why the verdict should not be set aside and a new trial had. Cause was shown during the term, and the argument lasted six days. We have now to deliver the judgment of the different members of the court.

It is material, I think, first to call attention to the various charges contained in the information, which consists of ninety-eight counts. The ninety-seventh and ninety-eighth counts relate to an intent to employ the ship as a transport or store-ship, as well as to commit hostilities. These counts were given up at the trial by the then attorney-general. The remaining ninety-six counts consist of the first eight counts repeated twelve times, merely varying the offense charged. The first eight counts charge that the defendants did *equip*, the next that they did *furnish*, the next that they did *fit out*, and so on. Then all the varieties of *attempting*, *procuring*, *aiding*, &c., are introduced, making the total eight times twelve, or ninety-six counts. The attorney-general at the trial said, "The first eight counts are those only to which any attention need be paid," not meaning to abandon the rest, but intimating that the first eight represented all the rest. I propose to state in substance what those eight counts are.

The first count charges that the defendants, without the leave, &c., did equip the vessel with intent and in order that such ship or vessel should be employed in the service of the Confederate States with intent to cruise and commit hostilities against a certain foreign state with which Her Majesty was not then at war, to wit, the republic of the United States. The second count resembles the first, but charges that hostilities were to be committed against the *citizens* of the foreign state. The third count charges that the defendants did equip, with intent to cruise and commit hostilities against a foreign state with which Her Majesty was not then at war. The fourth count is similar to the third, varying the description of the parties against whom hostilities were to be committed. The fifth, sixth, seventh, and eighth counts are similar

to the first and second, varying only the description in the first and second counts of the belligerent parties who were affected by the conduct of the defendants. The charge, therefore, resolves itself into a charge of equipping, &c., with a certain intent, the intent being stated in two different ways, or a charge of endeavoring, attempting, &c., to equip, or procuring to be equipped, with the same two intents in different counts. If what was intended to be done would not, when done, amount to an equipping, &c., within the act, then there would be no attempting or endeavoring, &c., contrary to the act.

The question then arises, what is the true construction of the foreign-enlistment act, particularly of the seventh section of that statute, upon which the information in this case is framed; and what is the meaning of the words "equip, furnish, or fit out" in that section; and also what is meant by the expression "with intent to cruise or commit hostilities."

It is a highly penal statute, creating a new crime or misdemeanor, making those who commit it liable to fine and imprisonment, if found guilty, and the ship, the subject of the crime, liable to forfeiture. The attempt or endeavor to commit the offense, or the procuring it to be committed, or the aiding, assisting, or being concerned in the commission of it, is each made criminal, and liable to the same punishment and forfeiture.

In order to have a comprehensive view of the whole subject, it may be useful to become acquainted with the history of the statute and of the act of the American Congress, which is said to have given rise to it. It may be useful also to learn what have been the opinions (differing, it may be observed, widely from each other) of learned jurists and of eminent statesmen, not always agreeing, on the subjects of international law, belligerent rights, and neutral duties. But none of these can furnish even the semblance of authority for construing an English act of Parliament, which creates for the first time an indictable offense, rendering the party found guilty of it liable to fine and imprisonment, and his property liable to forfeiture; and it should be borne in mind that the property is not forfeited unless the crime has been committed. I, perhaps, may here remark, that neither on the trial nor during the argument has any one suggested by name who has committed the crime, what he did in committing the crime, or what are the acts and who are the persons by whose conduct a ship of the value of the Alexandra has become forfeited and seized by the Crown. If the statute in terms reasonably plain and clear makes what the defendants have done a punishable offense within the statute, we want not the assistance which may be derived from what eminent statesmen have said, or learned jurists have written, on international law or belligerent rights; we want not the decisions of American courts to see whether the case before us is within the statute; but no opinions of jurists, no decisions of foreign courts, will enable us, or ought to induce us, to declare, if the act be not within the words of the statute, that the scope and object, the spirit and intention of the statute include the case before us, though it be not plainly and clearly expressed by the legislature. We have had in this country no court of criminal equity since the Star Chamber was abolished, as Lord Campbell called it, in a case which was tried before him, viz, "The Emperor of Austria *vs.* Day," which is to be found in the 30th Law Journal, (Chancery, 706.)

Mr. Justice Blackburn well lays down the rule in the first volume of his Commentaries, page 92: "The freedom of our constitution will not permit that in criminal cases a power should be lodged in any judge to construe the law otherwise than according to the letter." Our institu-

tions were never more safe in my opinion than at the present moment, but we cannot afford at any time to lose any of the grounds of our security; and no calamity would be greater than to introduce a lax or elastic interpretation of a criminal statute to serve a special but a temporary purpose. And here I may notice, in order to dispose of it, the argument of the attorney-general about construing a statute, even a penal statute, so as to suppress the mischief and advance the remedy. He cited Plowden and the resolutions in Heydon's case, 3d Reports, page 18. But all the penal statutes alluded to there, and in all the places where that doctrine is to be met with, are statutes which create some disability
[59] or forfeiture; none of *them are statutes creating a crime, and I think it is altogether a mistake to apply the resolutions in Heydon's case to a criminal statute which creates a new offense.

The distinction between a strict construction and a more free one has, no doubt, in modern times almost disappeared, and the question now is, What is the *true* construction of a statute? If I were asked whether there be any difference left between a criminal statute and any other statute not creating a crime, I should say that in a criminal statute you must be quite sure that the offense charged is within the letter of the law. No doubt there are some other cases to which the statute is to be applied, unless you are quite assured of the contrary, namely, that the case is not within the law.

As to this particular statute having for its object the *prevention* and not *punishment*, which was pressed upon our attention more than once, that is not a matter peculiar to this statute. I apprehend that this statute has that object in common with all other criminal statutes that were ever passed, which are all intended not to punish guilt, but to prevent crime. And as to the recital that the existing law was not sufficient, to which our attention was particularly called, I presume that the recital really belongs also to every statute of every sort, whether mentioned in it or not; for, if the law be sufficient, the statute is a piece of superfluous legislation.

So, also, I think that we have nothing to do with the political consequences of our decision, or the dissatisfaction which it may create in any quarter anywhere; and I cannot help expressing my regret, not unmixed with some surprise, that the learned attorney-general has more than once adverted to the consequences that may arise from our holding that what the defendants have done is not contrary to our municipal law. That it is not contrary to the law of nations he has distinctly stated, and indeed made it the subject of an argument, (*in another place, as I think they call it,*) "that other countries have no right to complain of it as a violation of the law of nations." On the first day of his argument he pointed out how the supply of ships would work practically between a powerful country and a weak one, and he imagined (I am quoting his very words) "this country at war with France, and the dock-yards in Sweden supplying, fitting out, and equipping vessels of war for France," and he suggested that we might say, as he says we always have done in the course of our history, "We will not endure it, and if this goes on we will rather go to war with you than let war be carried on practically against us from your shores under pretense of neutrality." That we should do that with a weak power like Sweden, the attorney-general asks, "can any human being entertain any doubt?" He then goes on to suggest that a great power like the United States would adopt the same views, would look broadly at the practical mischief, would care nothing for Vattel, Grotius, or Puffendorff, and would say, "It is in substance as a noxious war, and we will not endure it."

I must say I doubt whether such views and such doctrines ought to be presented to us at all. I am sure that they will not influence our judgment, and I am inclined to suspect the soundness of any proposition of law which requires such a style of argument to support it. Indeed, I may add that international law would be of very little use if it were not to govern the conduct of *strong* nations as well as of *weak* ones. I would rather state the passage in the attorney-general's own words, because I should be very sorry to misunderstand or to misquote anything that fell from him. He says: "Can any one doubt that that is the way in which such a state of things would work practically between a powerful country and a weak one?" Then he imagines the case of Sweden, and then he says: "That we should do that with a weak power like Sweden can any human being entertain a doubt?" I venture to entertain a doubt and to express a hope that this country would not sully its high character by adopting toward a weak state a line of conduct which it would not think prudent or politic toward a strong one. I certainly had thought that the object of international law was, among other things, to state and define what acts, what conduct of any state, would justify war being made upon it by another state. But the attorney-general seems to think that if one nation be strong and another weak, the strong one will make war on the weak, though it has no violation of international law to allege against it and to complain of, but merely some inconvenience arising from the neutral state continuing its commercial relations with another power, with whom it has been accustomed for a long time to maintain them.

Again, on the second day, the attorney-general said: "The peace and welfare of the kingdom, perhaps of the world, is declared by the legislature to depend" upon this matter. When his attention was called to this from the bench, he said that perhaps he was going too far in saying "the peace of the world," and no doubt he was, for there is not any declaration by the legislature about "*the peace of the world*" at all, and the expression "peace and welfare of this kingdom," which no doubt is the preamble, I believe relates, as far as "peace" is concerned, only to that tranquillity which is in the care of the magistracy, and has nothing whatever to do with the relations of peace or war with respect to other countries.

At the end of his address, (no doubt conspicuous for its ability,) he stated the grounds on which our decision ought to rest, in a manner perfectly unexceptionable; and I wish that the whole of his argument had corresponded with the dignified and eloquent manner in which it was concluded.

So also I think we have nothing to do with the question as to which construction of the clause is most for the interest of this country as a great maritime power. It is degrading the discussion to make it in any degree turn upon a question of advantage or benefit to be gained or lost; and on such a subject we might turn out to be quite mistaken. In the present enlightened state of the civilized world it may turn out that that doctrine and those principles are to be preferred which would make us prosperous in peace rather than those which would make us successful in war.

In construing the statute, it is our duty to ascertain the true legal meaning of the words used by the legislature, and to collect the intention from the language of the statute itself, either the preamble or the enactments, and not to make out the intention from some other sources of information and then construe the words of the statute so as to meet the assumed intention; and this appears to me to be the mistake of the

counsel on the part of the Crown. They say, "Here is a powerful state complaining that what you are doing is as bad as war," and saying "We will not endure it;" and then they say, "The welfare and peace of this country require that the act should be so construed as to silence
[60] that *complaint." But we cannot and ought not, even if the matter before us seemed to be within the mischief which it is supposed the statute was meant to remedy, to deal with it as a crime unless it be plainly and without doubt included in the language used by the legislature. In my judgment it is not within the letter of the statute, nor within the spirit, nor was it at all contemplated by those who framed the law.

The danger of traveling out of the statute itself, and looking elsewhere for the object of the legislature in passing it, may be illustrated by the wide difference of opinion between the late attorney-general and the present attorney-general upon this very point. The late attorney-general, in opening the case to the jury, said: "It appears particularly to have been contemplated by the framers of the foreign enlistment act to enforce the observance of neutrality in the event of war;" which I certainly understand to mean, to compel a compliance with the duties of neutrality, as expounded by international law. But the attorney-general, in the beginning of his argument in support of the rule, took quite an opposite view, but I own I think a much more correct one, and said that the whole argument of his speech, (in that other place which has been alluded to,) was to establish "the directly contradictory proposition;" and his language is this: "I say that there were no such obligations, and that it is a total misinterpretation of the municipal law to say that there was any state in the world which, according to the settled and established principles of international law, could have required this country to prohibit those which were prohibited under that statute," meaning the foreign enlistment act. And even with respect to the Alabama he intimates that though there had been a breach of the municipal law, there had been, (and I think he is quite correct in this,) no violation of international law, or anything of which a belligerent at peace with this country had a right to complain.

In endeavoring to discover the true construction of the seventh clause of the statute, the first matter to be attended to is, no doubt, the actual language of the clause itself, as introduced by the preamble; secondly, the words or expressions which obviously are by design omitted; and, thirdly, the connection of the seventh clause with other clauses in the same statute, and the conclusions which, on comparison with other clauses, may reasonably and obviously be drawn. I do not mean to exclude other considerations, but these appear to me to be the most obvious and the safest.

The learned attorney-general, with apparent effect, asked, "Why do you try to explain a statute by words which are not to be found in it? It is dangerous to adopt such a course." On the first impression the objection seems not at all unreasonable; but the answer, on a very little consideration, is quite obvious. In order to know what a statute *does* mean, it is one important step to know what it *does not* mean; and if it be quite clear that there is something which it *does not* mean, then that which is suggested or supposed to be what it *does* mean must be consistent and in harmony with what it is clear that it *does not* mean. What it *forbids* must be consistent with what it *permits*. The seventh section contains the words "equip, furnish, fit out, and arm," but does not contain the word "build;" and I think no one can doubt that

that word was purposely omitted from the act of Congress and from our own statute.

I am not surprised that the attorney-general was desirous of preventing this mode of investigation, because it leads, in my judgment, irresistibly to this conclusion: that whatever might be done in the way of mere building, before the statute, may now be done notwithstanding the statute. In common honesty and candor, it cannot be suggested that the legislature meant to suppress the mere building of ships for a belligerent, (as it were by a side-wind,) and to suppress their trade without exciting their alarm. I think, therefore, I may pronounce with confidence that it is lawful now to build ships, and even to build ships for war. The ship-builders of this country, for above a century, have built ships for almost every nation on the earth, some for warlike purposes, and some for commercial. Ship-building is one of the most considerable of our industrial and commercial pursuits. Building ships is not prohibited, even building ships for war is not prohibited, provided they be not "*equipped, furnished, fitted out, or armed*" *in our ports*, with either of the intents stated in the seventh section; and the words "*equip, furnish, fit out, or arm*," with the *intent stated in the seventh section*, ought to be construed, (if they can be so construed,) so as to leave the commercial interest of ship-builders untouched. If the comparison of the seventh section with other sections in the act makes a certain proposition clear and undoubted, the act must be construed accordingly, and ought to be so construed as to make it a consistent and harmonious whole. If, after all, it turns out that that cannot be done, the construction that produces the greatest harmony and the least inconsistency is that which ought to prevail. I cannot understand how in the same breath it can be admitted that the question is far from being free from difficulty, and yet a construction is called for to create a crime and embarrass an important branch of British industry.

A comparison of the seventh section with the second leads me to a conclusion quite different from that at which the learned attorney-general arrived. With respect to the second section, it did not escape him that the offense created by the second section is, in a natural-born British subject, an offense everywhere, in the realm or out of it. To use his own expression, "the net is thrown as wide as the entire world," and enlistment anywhere is the matter forbidden. Not so the seventh section: the acts forbidden by the seventh section are forbidden to Her Majesty's subjects in Her Majesty's dominions *only*—elsewhere they are no offense at all; and the attorney-general failed to draw the conclusion which to my mind is irresistible, namely, that neither the act nor the intention is so much the object of the legislation as the *place;* it is the place (a British port here or abroad) which is made sacred. Let the ship-builder, though a British subject, take his capital and materials elsewhere, and he may build what ship he pleases, and arm it and equip it as he likes, for the use of any belligerent not at war with this country; and with whatever intention he is actuated, if he commits no act of hostility, he neither violates international law nor commits any breach of the foreign enlistment act. The great object of the statute, therefore, was not to prevent the building of ships by British ship-builders for one of two belligerents, with neither of whom we were at war, but to preserve the ports of this country from being made ports of hostile equipment against a friendly belligerent; it was not in any way to fetter the commerce of this country or the trade of ship-building beyond what was necessary for that purpose.

If it were important to prevent ships from being equipped, fur-

[61] nished, fitted out or armed, with the *intents mentioned in the seventh section, by British subjects, it might have been made the subject of universal prohibition, as far as British subjects were concerned, as easily as enlistment, but the prohibition does not go beyond the ports of the British dominions.

Again, a comparison between the seventh section and the eighth throws also some light on the meaning of the words used in the seventh section, and on the object with which it was framed. The eighth section of the British statute makes it a misdemeanor to add to the number of guns, or to change them for others, or by the addition of any equipment for war to increase the warlike force of any ship or vessel of war, or cruiser, or other armed vessel, which at time of her arrival in any port of the United Kingdom was in the service of any foreign prince or government, or of any person or persons exercising or assuming to exercise any powers of government. In short, it forbids any one in this country to increase the warlike force of any vessel of war, or armed vessel, not belonging to the sovereign of this country. In this it differs from the corresponding clause in the act of Congress (which is the fifth) which forbids the increase of warlike armament to a ship of war only when it is for a state at war with a state or people with whom the United States are at peace. But in this country the increase of the warlike armament of any foreign ship of war is not permitted at all. Whether it belongs to a state at peace or at war with those with whom we are not at war, is no question; our ports are not to be disturbed by a warlike armament at all. But then everything or anything else may be done for the purpose of mere navigation; any sea damage to the ship or tackle may be repaired. If a vessel be capable of repair, she may be equipped, furnished, and fitted out; if a steamer, she may be supplied with coals, in order that she may reach a port of her own country in safety. One conclusion clearly to be drawn from this is, that whereas in the United States foreign vessels, vessels of war, of one belligerent were not allowed to increase their warlike force if the United States were at peace with the other belligerent, in the British dominions a foreign vessel of war is not allowed to increase its warlike force at all under any circumstances. The one may be ascribed to some doctrine of neutrality; the other to a wish to preserve the peace of the British ports, and not to allow them to be made places of warlike equipment for foreign vessels at all.

But there is another result more worthy of observation. It is, I presume, conceded that a Federal vessel of war, damaged by storm, may put into an English port, and may refit and repair, so far as is necessary to make it again navigable, in order to reach its own country. The eighth section of the statute by implication permits all that it does not forbid. A Federal vessel of war coming into our ports would be allowed, no doubt, to reach some other port; but the ship-builder in our port would be equipping, furnishing, and fitting out that vessel, knowing that the commander might cruise and commit hostilities against the so-called Confederate States. But does the ship-builder commit a misdemeanor? Certainly not. Or is the vessel forfeited? Certainly not. If the argument for the prosecution be well founded, and the construction of the statute by the counsel for the Crown be correct, the ship-builder who repaired any damage to a vessel of war belonging to either of the belligerents would be liable to a prosecution as much as any of the present defendants.

I now come to the seventh section itself, and to the terms in which the statute enacts that persons doing certain acts with a certain intent,

shall be deemed guilty of a misdemeanor. It is necessary carefully to separate the act itself from any attempt or endeavor to commit it, and to simplify the inquiry as to how the statute should be construed. I will take, as the information does, one of the prohibited matters, "equip" for instance, and examine that alone, without reference to the others, and without reference to attempting, procuring, aiding, assisting, &c. The clause would then run thus: "If any person within any part of Her Majesty's dominions, in the United Kingdom, or beyond the seas, without the leave and license of Her Majesty, shall equip any ship or vessel with intent or in order that such ship or vessel shall be employed in the service of any foreign state or government with whom Her Majesty shall not then be at war, every such person so offending shall be deemed guilty of a misdemeanor." Two questions obviously arise upon the construction of these expressions—1st, Whose intention is it which is meant by the act; and 2dly, What is the meaning of the word "*equip?*" It is difficult to make out what was the intention of those who framed this clause, as to the manner in which it should be broken up into parts, and then be put together so as to present all the alternatives contemplated. Probably, I think one may say certainly, it could not mean that "with intent, and in order that such ship or vessel should be employed in the service of any foreign prince, state," &c., "or a transport or store-ship" should stand alone without some subsequent matter being added, for that would make it a misdemeanor to furnish a transport or store-ship to any foreign prince, &c., without any regard to his being at peace or war with any state or government with whom the sovereign of this country should not then be at war.

It is probable that the words "against any foreign prince, state," &c., should follow the word "store-ship;" and then the effect of the clause would be to make it a misdemeanor to equip a ship or vessel as a store-ship, with intent and in order that such ship should be employed in the service of any foreign prince, &c., as a transport or store-ship, against any prince, state, &c., with whom our sovereign should not then be at war, or *with intent* to cruise and commit hostilities against any such prince, state, or potentate; and some twenty-four of the ninety-eight counts are founded upon this view of the section. Or the alternative may be, "as a transport or store-ship, or with intent to cruise or commit hostilities," &c.; and then the effect of the clause would be to make it a misdemeanor to equip a ship with intent or in order that she might be employed by one belligerent as a transport or with intent to cruise or commit hostilities against the other.

It is certainly to be regretted that the wisdom and sagacity which the attorney-general discovers in adjusting the verbal differences between our statute and the prior act of Congress, were not exercised in baffling the enemy of the bill, who by leveling it at transports and store-ships, as well as ships of actual war, has thrown the whole clause into great confusion, which I presume it is suggested he meant to do by speaking of him as "not originally a friend to the bill," and as having made the alteration "in committee." But neither this court nor any other court can construe any statute, and least of all a criminal statute, by what counsel are pleased to suggest were alterations made
[62] in *committee by a member of Parliament, who was "no friend of the bill," even though the journals of the house should give no sanction to the proposition. This is not one of the modes of discovering the meaning of an act of Parliament recommended by Plowden, or sanctioned by Lord Coke or Blackstone. Where two intents are mentioned, and they are put in the alternative, thus, an intent to do such a

thing, or an intent to do another, the obvious and the grammatical mode of reading the clause would be to make the two intentions the alternatives; but most of the counts in the information (about seventy-two) combine the two intents together, and in effect turn "or" into "and," and charge the defendants with "equipping," &c., the ship, with intent that the ship should be employed in the service of one belligerent with intent to cruise and commit hostilities against the other belligerent with which Her Majesty was not then at war. If this mode of reading the seventh section be not correct, seventy-two of the counts are improperly framed, and the statute does not warrant their making any such charge. But, assuming it to be correct, then the question arises, whose intent does the information mean? Who is it that the information charges with an intent to cruise and commit hostilities? According to all rules of pleading, it must be the intent of the person committing the act; and this view would make all the counts in substance to mean much the same thing; that is to say, with reference to the intent. There was no direct evidence that the persons "equipping, fitting out," &c., or "aiding, assisting," &c., "in equipping," &c., had any intention to cruise or commit hostilities at all; and if so, the whole charge would fail altogether. The attorney-general would read, "with intent to commit hostilities," as if the expression were, *with intent that hostilities should be committed by somebody;* but that mode of reading the expression is contrary to the rules of pleading and to all authority on the subject; and especially it seems to me to be contrary to what was decided in the United States *vs.* Quincy, of which a full report is given in the appendix to the trial. I wish to call particular attention to this case, and to the two answers of Mr. Jefferson, referred to by the solicitor-general in the course of his argument. I think that those answers lead to a construction quite different from those suggested by the counsel for the Crown. Mr. Jefferson's answers clearly show what was the opinion of the American Government; and the decision of the Supreme Court, in the United States *vs.* Quincy, is the best authority as to the state of the law. The first answer refers to arms and ammunition—not to ships at all. Mr. Jefferson says, "Our citizens have been always free to make, vend, and export arms. It is the constant occupation and livelihood of some of them. To suppress those callings, (the only means, perhaps, of their subsistence,) because a war exists in foreign and distant countries, in which we have no concern, would scarcely be expected. It would be hard in principle and impossible in practice."

Why, I would ask, should not this view of the subject of industrial pursuits apply to ships and ship-builders in England? In America it apparently does apply. The second answer relates to ships, but Mr. Jefferson does not say anything in disapprobation of a mere supply of ships, even ships of war. What he says is this: "But the practice of *commissioning*, equipping, and manning vessels in our ports to cruise on any of the belligerent parties is entirely disapproved, and the Government will take effective measures to prevent it," and accordingly the third section of the act of Congress is directed against fitting out and arming, and also against commissioning. The seventh section of our act is directed against equipping, furnishing, fitting out, or arming, and also against commissioning. But there is not a single syllable against ship-building, or selling, or making for sale ships, even of a warlike character. So with respect to the law and the construction of the American act of Congress. The judgment delivered by Mr. Justice Thompson in the United States, in the case of the United States *vs.* Quincy, gives to the citizens of the United States a right to send armed

vessels out of their ports. It aims at preventing the citizens themselves from committing hostilities against foreign powers at peace with the United States, but leaves them at perfect liberty to sell the vessel to one of the belligerents, and provided hostilities are not committed by the citizens of the United States, there is no breach of the law. The accompanying remark of the learned judge which immediately follows, proves that the attorney-general is endeavoring to enforce against British ship-builders a principle which the Supreme Court of the United States altogether repudiates as applicable to citizens of the United States. If our statute was passed to give the United States and other countries the same advantage that their act of Congress gave to us, there may be a reciprocity in words, but there is no reciprocity in reality and in construction if the argument for the prosecution is to prevail. Mr. Justice Thompson says, "All the latitude necessary for commercial purposes is given to our citizens, and they are restrained only from such acts as are calculated to involve the country in war," which I understand to mean that the citizens of the United States have a right to build what ships they please, and dispose of them as they please, provided they do not themselves take part in the war, and the ships are not employed by them to commit hostilities. And what pretense is there for giving to our foreign-enlistment act, with respect to ship-building, a construction totally different from that which the act of Congress bears, according to the judgment of the American judges themselves in their Supreme Court?

There is, indeed, a difference of expression between the act of Congress and our statute—they have merely the words "with intent;" we have "with intent or in order." The attorney-general says that he supposes that the words "in order" were added to avoid some evasion or quibble. I believe that they were added to leave no doubt as to the meaning; the expression "in order" is explained in Todd's Johnson to signify "means to an end," and Jeremy Taylor, Tillotson, and Swift are quoted as authorities; the passage from Swift is, "One man pursues power in order to wealth"—that is, power is the "means," wealth is "the end." And the seventh section forbids equipping a ship or vessel as a "means" to "the end" of cruising, or committing hostilities. In all common sense and understanding, if the nature of the equipment has no reference whatever to the commission of hostilities, it cannot be the "means to that end," and there is no breach of the statute by that sort of equipment. Webster's American Dictionary gives precisely the same explanation of the words "in order." And this leads me to remark that even the word "intent" alone, and without "in order," which is put in, as I think, to explain it, and give it the true meaning which an English lawyer would assign, ought not to lead to a different conclusion. The attorney-general seems to think that if there be an intent, and if anything *of whatever kind be done in pursuance of it, that is sufficient. [63]

With great respect for the opinion of so eminent a lawyer, in my judgment that is not sufficient. If a statute simply made it a felony to attempt to kill any human being, or to conspire to do so, an attempt by means of witchcraft, or a conspiracy to kill by means of charms and incantations, would not be an offense within such a statute. The poverty of language compels one to say "an attempt to kill by means of witchcraft," but such an attempt is really no attempt at all to kill. It is true the sin or wickedness may be as great as an attempt or conspiracy by competent means; but human laws are made not to punish sin, but to prevent crime and mischief.

I am, therefore, of opinion, that the seventh section should be con-

strued as if the words were "if any person," in the places mentioned, "shall, without the leave, &c., equip, as a means, any ship or vessel to the end that such ship shall cruise or commit hostilities;" and so read, if after all the equipping or furnishing or fitting out the ship is incapable of cruising or committing hostilities, there has been no such equipping, &c., as the statute was intended to prevent.

And this brings me to the meaning of the words "equip, furnish, fit out," and "arm," for they must all be considered together; and the question is not so much what did the legislature mean, as what is the meaning of what they have said—of the words they have used. A clause, admitted to be awkwardly framed, by no means free from difficulty, and of considerable doubt, was scarcely worth the very minute criticism and comparison which it has received; but on the part of the prosecution it is contended that the seventh clause was meant to put ships constructed for war or adapted to war upon a footing different from any other munitions of war; to leave cannon of every description, arms of all sorts, gunpowder, and shot, and shell, to be freely supplied to either belligerent, but that no ship or vessel of a warlike character in any respect was to be furnished to a belligerent with whom this country was not at war. If this had been the object of our legislature, it might have been accomplished by the simplest possible piece of legislation; it might have been expressed in language so clear that no human being could entertain a doubt about it, instead of the awkward, difficult, and doubtful clause which it is admitted, on the part of the attorney and solicitor-general, we have to deal with. It cannot be suggested that the object was to conceal from the ship-builders the ultimate effect of the clause, and to prevent a clamor on the part of the builders of ships that they were interfered with in a way which the casters of cannon and the makers of gunpowder were not. There is not a syllable in the act of Parliament, nor in anything connected with it, nor in any cotemporary proclamation, speech, or publication of any kind professing to put ships on a footing different from any other implement of war; and it was admitted most distinctly by the attorney-general, and I think correctly enough, that there was no foundation for any such distinction in international law. But what is the ground of this distinction between cannon, ammunition, and other articles of that description, and ships? I think it was insisted upon entirely without any sufficient foundation. The attorney-general says, as I understand him, that as far as international law is concerned, there is no distinction between them, and that the distinction arises from our municipal law. He entirely agrees with me upon the subject, except as far as the municipal law makes a difference. His expression is, "I entirely subscribe to what fell from the lord chief baron at the trial, that it could make no difference whether there was a sale of a thing ready made without a previous contract, or a delivery under a contract." No doubt, he says, that would be so if no legislation made a difference, and he considers that the foreign enlistment act made that difference, and his reason is a singular one. He says that Her Majesty has the power, whenever she pleases, to prohibit every other species of contraband trade, but that she has no power to deal with a ship, so that ships are left out, to be dealt with under the foreign enlistment act. The present statute forbidding the exportation of arms, ammunition, and so on, is the 16th and 17th Vict., passed in 1853, founded on a statute, the 3d and 4th Wm. IV, cap. 52, passed in 1833. I cannot find in the index to the statutes any earlier one. So that the construction of the foreign enlistment act passed in 1819 is apparently made to turn upon an act passed in 1833.

The result of the argument on the part of the Crown seems to be this: A ship-builder may build a ship altogether of a warlike character, and may arm it completely with the latest and most mischievous invention for the destruction of human beings, and may then sell it to one of two belligerents, with a perfect fitness for immediate cruising, and ready to commit hostilities the instant it is beyond the boundary of neutral territory, provided there was no previous contract or agreement for it. But if there be any contract or agreement for it, it cannot be made to order with the slightest warlike character about it, though this be part of the accustomed and usual trade of this country, and though the ship leaves our shores a mere hull utterly incapable of cruising or committing hostilities, and, as far as war is concerned, as innocent and harmless as the mere timber would be of which it is built. The means of evasion which this furnishes is obvious. A signal, a word, a gesture may convey an order wholly incapable of being proved. It is unnecessary to dwell upon this; it is at once perfectly obvious; and the real difference between a crime and an act of commerce may, in point of evidence, entirely disappear. To use an expression borrowed from one familiar in Westminster Hall about a coach and six, a whole fleet of ships might sail through such an act of Parliament as this, if this be the meaning of it; and we are to believe that our legislators exhausted all their wisdom in settling the language of the seventh clause, and had none remaining to perceive the enormous loop-hole which they had left.

Again, a British subject may buy a vessel of war rejected by our navy, fit it up and arm it, and sail with it to a port of either belligerent to sell it; but if either belligerent should, by an agent, purchase it at a public sale by auction, he cannot put a mast into it, or hoist a sail to reach his own country; but an armed vessel of either belligerent may come into our ports and obtain whatever mere naval but not warlike stores she may require, so as to enable that ship to reach some other port. Observe, coming into a port completely armed, he may refit and repair; but being altogether unarmed, he cannot put up a mast or a sail merely to take that vessel across the ocean. I cannot believe that the sound construction of an act of Parliament passed within fifty years of the present time can by possibility lead to such an amount of inconsistency and absurdity, and, I may add, injustice, as is involved in the construction which we are asked with so much earnestness to put upon this
[64] statute. It *seems to me to amount almost to that degree of what is said to be repugnant to common sense which ought, according to the golden rule, to defeat the effect, even if the words conveyed the meaning, which they certainly do not.

In my judgment, the act was not framed in order to make any difference between ships of war, and guns, ammunition, and other implements of war, but to prevent our shores from being made the points of departure of hostile expeditions *commissioned* and *equipped* to commit hostilities against a belligerent not at war with us. The seventh section, therefore, forbids the issuing or delivering a commission as well as equipping in order to commit hostilities; for without a commission any act of hostility would be a clear and undoubted act of piracy, and there was no occasion for a new law against piracy. To suppose that the legislature left to British ship-builders the power and right to *build* ships for war, as before the statute, but that they meant by the words "equip, furnish, and fit up," to forbid them from sailing away, however harmless and innocent of war their condition might be, is, I think, an unworthy imputation on the good faith of those who made the law. There can be no doubt they did not mean to permit a ship or vessel to go away *armed*,

for they have said so distinctly; but "*arming*" admits of many degrees, and a doubt may arise, if the word "*arm*" alone had been used, what degree of arming would constitute the offense. But the degree is settled and determined by taking the whole sentence: the ship is not to be equipped, &c., in order to cruise or commit hostilities; if the equipment amounts to that, the law is broken; if it does not, no offense has been committed.

With respect to the rule, I am of opinion that none of the grounds upon which it was moved ought to prevail, and that the rule ought to be discharged.

Mr. Baron Bramwell. The law that governs this case is a written law, an act of Parliament, which we must apply according to the true meaning of the *words* used in it. We must not extend it to anything not within the natural meaning of those words, but within the mischief, or supposed mischief, intended to be prevented, nor must we refuse to apply it to what is within that natural meaning, because not or supposed not to be within the mischief.

In this, as in other cases of doubtful meaning, it is legitimate to resolve that doubt by ascertaining the general scope and object of the enactment. And, accordingly, international law has been referred to, certain propositions have been laid down in that necessarily vague science, and it has been argued that the act was passed merely to enable the Crown to enforce the observance of that law by its subjects, and so it has been sought to find its meaning. But it is clear to me that the statute prohibits some things which are not, and I strongly incline to think permits some things that are, prohibited by international law. In the result, I concur with the learned attorney-general, that the question which we have to answer cannot be solved by treating the statute as a mere enforcement of international law.

Again, it may be a legitimate mode of determining the meaning of a doubtful document to place those who have to expound it in the situation of those who made it; and so, perhaps, history may be referred to to show what facts existed, bringing about a statute, and what matters influenced men's minds when it was made. But we know that in our legislation an argument may be used in support of the principle of a bill which is consistent with particular provisions of great variety; and we know that in all legislation, where it is intended to prohibit a thing, it may be necessary to prohibit others under color of doing which the thing intended to be prohibited may be done. This, therefore, affords no certain clue to the meaning of this enactment; nor would ascertaining the objects of the authors of the American act, from the provisions of which in our act there is a purposed difference.

It becomes necessary, then, minutely to scrutinize the *words* of our statute, and interpret them with such assistance, if any, as can be got extra its four corners. Now, it is no doubt a penal statute, but I think it ought to be construed as laid down by the late Mr. Sedgwick in his book on statutory and constitutional law. He says, at p. 326: "But the rule that statutes of this class are to be considered strictly is far from being a rigid or unbending one; or rather, it has in modern times been so modified and explained away as to mean little more than that penal provisions, like all others, are to be fairly construed according to the legislative intent, as expressed in the enactment; the courts refusing, on the one hand, to extend the punishment to cases which are not clearly embraced in them, and on the other, equally refusing by any mere verbal nicety, forced construction, or equitable interpretation, to exonerate parties plainly within their scope;" a passage in which good

sense, force, and propriety of language are equally conspicuous; and which is amply borne out by the authorities, English and American, which he cites. And I must here record the well-founded remark of the attorney-general to the effect, that whereas, formerly, statutes being extended equitably, as it was called, beyond their natural meaning, penal statutes were exempt from such extension; now that such liberties are not taken with statutes, there is no reason for construing penal statutes on such different principles as were formerly applied. Nor, I confess, can I think that the interests of the ship-building, or any other trade, are so concerned in this matter as to afford an argument in favor of the defendant's construction.

I now come to the very words of this much-debated section seven. I leave out all which are needless to the matter in hand. I am satisfied that the words "equip," "furnish," and "fit-out," are not limited to transports and store-ships. The rule which interprets "*reddendo singula singulis*" cannot apply here: because all the words "equip," "furnish," and "fit-out," are sensible in reference to vessels intended to cruise or commit hostilities. The section reads thus: "If any person within any part of the United Kingdom shall equip, furnish, fit-out, or arm any ship or vessel with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, as a transport or store-ship, or with intent to cruise or commit hostilities," &c. Now we have to ascertain the meaning. On the part of the Crown it is said, that if there is an intent that the ship shall be employed in the service of any foreign [65] *prince, with intent to cruise or commit hostilities, any equipment with that intent is sufficient, however unfit to accomplish such intent; that the rigging, victualling, manning, and other parts of equipment are lawful or not according to the intent with which the ship will be used by those for whom they are done. This is said to be according to the very words of the statute. Supposing it to be so, it seems to me that the difficulty is only shifted; that the question remains and becomes this: What is the meaning of the words "with intent or in order that such ship shall be employed in the service of any foreign prince with intent to cruise or commit hostilities?" Does the expression mean with intent or in order that by means of such equipment she may cruise or commit hostilities, that she shall be in a condition for proximate hostilities, so that the port which she leaves will be a "station of hostilities?" or does it mean, as contended by the Crown, that an intent is within the statute, where the equipment is in order that she may be employed in the service of a foreign prince, though further acts on his part are necessary to enable her to cruise or commit hostilities?

I think that this is a correct statement of the question, and it seems to me that it must be answered adversely to the Crown's contention. I think that the fair and natural meaning of the words is, that the equipment must be fit for cruising or the commission of hostilities. The word "intent" before to "cruise or commit hostilities," seems put there on purpose to show this. But I dislike relying on a single word. Let it then be rejected, and the statute reads thus: "If any person shall equip any ship with intent or in order that such ship shall be employed in the service of any foreign prince to cruise or commit hostilities." Now what would be the meaning if the words were, "if any person shall equip any ship with intent or in order that such ship shall cruise or commit hostilities in the service of any foreign prince?" Surely that would require an equipment suited for such cruising. Do those words differ from the following: "If any person shall equip any ship with intent or

in order that such ship or vessel shall be employed to cruise or commit hostilities in the service of any foreign prince?" And do these latter words differ from those in the statute? I think not. Take Mr. Mellish's illustration. If the words were, "equip with intent or in order that the ship shall be employed in the service of a merchant in the whale fishery," could it be said that any equipment or intent would be within the act, unless the equipment was or was meant to be fit for whaling?

I think that this is the plain, fair, and natural meaning of the words by themselves, but there are collateral considerations to the same effect. Building is not prohibited; selling is not prohibited. I do not agree with Mr. Mellish that if the statute does not prohibit building, it must necessarily permit equipping. It is possible that the legislature meant, you may build, which is harmless unless you equip, and that you may not do. But it seems to me that the omission of "build" and "sell" shows that something beyond a harmless ship and equipment was meant to be prohibited. It may be said that selling an equipped, armed, and manned ship is not prohibited, in words at least, and, therefore, that no argument can be derived from the omission of "build" and "sell." My answer is that there are no ready-made ships equipped and armed for sale—they are done to order; there was no need therefore to prohibit what never has happened or could happen. Such a prohibition, therefore, would be useless: whereas a prohibition of building and selling would not.

Again, Mr. Karslake's argument comes in: A man has a ship for sale; he may sell it to a belligerent if he does nothing to it; he may equip it if the buyer means to use it as a packet-ship, but the same equipment is unlawful if the *buyer's* intent is different. So that the misdemeanor is committed or not according to the intent, not of the equipper, but of his customer. Because, suppose the equipper says, and truly, "I equipped it, that the buyer might do as he pleased with it. I cared not what that was," what intent is there, then, in the equipper's mind that she shall be employed to cruise? Moreover, the words are, "In order that," &c. Can there be an equipment in order that a vessel may be employed to cruise unless the equipment is calculated to enable her to do so? Again, surely the equipment of a vessel "with intent or in order that such ship or vessel shall be employed in the service of any foreign prince as a store-ship or transport," means an equipment as such, or an intent that such equipment should enable it so to be employed. Read the enactment without the word "employed," and can there be a doubt of the meaning? Does the use of that word make any difference? I think it cannot properly be said that a man does an act with intent unless he intends the act to bring about the thing intended, or unless the act is particularly fitted to do so. Thus, if a man builds a ship in which *he* means to go on a whaling voyage, he builds with the intent that the ship shall go on a whaling voyage, though unfit for whaling; but if he builds her for another, he does not build her with intent that she shall go whaling unless he particularly adapts her to that service. In this case, if "building" with intent that the vsssel should be employed to cruise had been forbidden, I think the forfeiture would have been incurred, for by her build she is particularly adapted for that purpose; but the word "equip" is used, and there is no forfeiture unless there is an equipment particularly fitting her for cruising, the equipper himself not intending to cruise in her.

I now come to section 8. This section is relied on by counsel of great ability on each side as being in his favor. It seems to me to be strong

for the defendents. It, by implication, permits any equipments to a vessel already armed, provided it is not an equipment of war. If the Alabama, with her armament, could run into an English port, whatever was done to her in this country before in the way of equipment, could be done now lawfully, and she might sally forth armed and equipped, though it is said the equipment alone was unlawful. It is said that such ship must have been equipped before, but she may have lost her masts, sails, or screw, and, according to the argument of the Crown, they may be replaced if she is armed already, but not if she is unarmed. Or she may come here armed and have her equipment bettered to any extent; she may have new masts, rigging, sails, boilers, or engines, but any one of these, if she is unarmed, is unlawful.

Further, in section 2. British subjects are prohibited from serving in vessels used, fitted out, or equipped, or intended to be used for any warlike purpose. Surely the vessel in which service is prohibited by this section must be capable of fighting. Again, the title and preamble both show that the statute was directed against fitting out and arming for warlike purposes and operations. Section 2 is in the same sense.

[66] *It is said that this construction requires the vessel to be *armed* to be within the act, and that so the words "furnish, fit out, and equip," are superfluous. I agree that they are not to be so treated, if it can be avoided, though I strongly incline to think that the person who used them attached no very definite idea to them. In the title it is "fit out or equip," without "arm." In the preamble it is "fit out and equip *and* arm." In section 2 it is "used, fitted out, or equipped, or intended to be used for any warlike purpose." In section 7 the words are "equip, furnish, fit out, *or* arm." Surely no precise idea was in the mind of the author of these varying though similar expressions. The probable intent was to use sufficiently comprehensive words, and to avoid such a question as whether a ship was "armed" strictly speaking, and to make it enough if she was equipped for warlike purposes. Such a case may well be that the ship, though not armed, is equipped for warlike purposes. By "armed," I suppose it would be meant ordinarily that she had cannon, but if she had a fighting crew, muskets, pistols, powder, shot, cutlasses, and boarding appliances, she might well be said to be equipped for warlike purposes, though not armed.

On these grounds, independently of authority, and on the very words of the act, I think that the construction contended for by the Crown is wrong, and that that of the defendants, prominently put by Mr. Mellish, is right, viz, that the section prohibits that equipment only which is itself such that, by means of it, the vessel can commit hostilities, and that no equipment which gives no means of attack and defense is within section 7.

It may be said this is a lawyer's mode of dealing with the question, merely looking at the words. It is so, and I think it right. A judge, discussing the meaning of a statute in a court of law, should deal with it as a lawyer, and look at its words. If he disregards them, and decides according to its makers' supposed intent, he may be substituting his for theirs, and so legislating. As has been excellently said, "Better far be accused of a narrow prejudice for the letter of the law than set up or sanction vague claims to discard it in favor of some higher interpretation, more consonant with the supposed intentions of the framers or the spirit which ought to have animated them." Important as are the objects of this statute, it must be construed on the same principles as one regulating the merest point of practice or other trifling matter.

But I am willing, as far as possible, to look beyond the mere words of the enactment—to look at its general scope and intent, and to take what is called a broader view. In my opinion the statute was intended to prevent any of the subjects or territories of this country from being belligerent—to prevent them from being immediately or proximately concerned in hostilities between foreign belligerents. With this object it forbids British subjects to enlist in foreign service for hostile purposes *everywhere*, whether the enlistment is in or out of the Queen's dominions. It forbids every one, whether a subject or not, to enlist persons *within the Queen's dominions*. It forbids the fitting out of vessels of war in *the Queen's dominions* by all persons, whether the Queen's subjects or not. It thus forbids the British subject being a combatant and the British territory a station of hostilities. It is personal and local to the extent of the Queen's sovereignty. It does not forbid the British subject, if abroad, from fitting out and arming a ship, nor, if here, from building and peacefully equipping it. Those provisions of the statute which forbid enlistments of British subjects anywhere go beyond the municipal enforcement of international law; but as far as those of the provisions of section 7, now in question, are concerned, it was intended to prevent the subjects of this realm giving cause of complaint of violation of international law by making the country a station of hostilities. I think that a vessel departing neither armed nor equipped so as to be capable of attack or defense is not a violation of international law, be its object what it may. No doubt the equipment of a vessel as a transport is prohibited by this act; and yet such a vessel is not "equipped for warlike purposes," nor is the port from which she departs a station of hostilities. But, as I have said, I know that in some cases the statute goes beyond the rules of international law; in the provisions in question I think it does not. Historically, we know how these words, inconsistent with the title and preamble, were introduced.

Further, if we consider the different matters brought forward to assist us in putting a construction on this act of Parliament, they all seem to confirm the opinion which I have expressed. There is no doubt what was the origin of the statute—what was the object immediately in view. It was to prevent the issuing forth of hostile expeditions from British territory. It was not, to judge from its history and the speeches made in reference to it, to prevent the departure from this country of vessels incapable of attack or defense. So of the American statute. Its origin and the object immediately in view are well known. They were the same as in the case of our statute. Nay, we know from American authority that it was intended not to prevent a commerce in vessels of war. But the language of the American statute is decisive. In section 3 the words are "fit out *and* arm." It is true the section proceeds, "or be concerned in furnishing, fitting out, *or* arming;" but clearly that means, be concerned in any part of the whole offense. There must be a fitting out *and* arming for any person to be concerned in either. It is absurd to suppose that the statute should make it an offense to fit out *and* arm, and also an offense, and an equal offense, to be *concerned* in fitting out where there was to be no arming. Besides, the same words apply to each matter, viz, with intent, &c. Further, section 10 of the American statute only applies where the ship is built for warlike purposes, *and* the cargo principally consists of arms and munitions of war, *and* the number of men or other circumstances render it probable that such ship is intended to be employed by the *owner* to commit hostilities, &c. It is clear that the bond to be given under

these sections could not be required in the case of the Alexandra until she was armed or had a cargo principally arms or munitions of war.

So, again, if we look at the rights and the obligations created by international law, if a hostile expedition, fitted out by a state, leaves its territory to attack another state, it is war; so, also, if the expedition is fitted out, not by the state, but with its sufferance by a part of its subjects or strangers within its territories, it is war, at least at the option of the assailed. They would be entitled to say, "Either you can prevent this or you cannot: in the former case it is your act, and is war; in the latter case in self-defense we must attack your territory whence this assault on us proceeds." And this is equally true whether the state assailed is at war or peace with all the world.

[67] * The right, in peace or war, is not to be attacked from the territory of another state—that that territory shall not be the basis of hostilities. But there is no international law forbidding the supply of contraband of war; and an unarmed vessel is, in my judgment, that and nothing more. It may leave the neutral territory under the same conditions as the materials of which it is made might do so. The state interested in stopping it must stop it as it would other contraband of war, viz, on the high seas.

I have hitherto considered the case independently of the authorities. They are exclusively American on the American statutes. I concur in the eulogium which the attorney-general passed on American legislation and American judges in this matter. An English lawyer must rejoice to see that those who administer in America a law, in great part our common inheritance, administer it on the same fearless and honest principles as those on which I venture to say law is administered here. The way to show our sense of their example is, not to consider what would be acceptable to their countrymen merely, and decide accordingly, nor to be influenced by the foolish threats which have been uttered, but to decide, as their judges have done, truly and honestly, to the best of our ability.

Now there are but three decisions to be noticed. The first is the case of the Independencia. It has not the slightest bearing on the present case. The Independencia was an armed vessel. Being so she came to Baltimore, and there had her fighting crew increased. Mr. Justice Story expressly states, as a fact found, that the court is driven to the conclusion "that there was an illegal augmentation of the force of the Independencia in our ports by a substantial increase of her crew. This renders it wholly unnecessary to enter into an investigation of the question whether there was not also an illegal increase of her armament." As to the Altravida, he says there was "an illegal outfit and an enlistment of her crew within our waters for the purposes of war." He decides then on the ground of warlike equipment in the American port. I doubt if Mr. Jones was right when he cited this case to show that it was not an authority against him.

Another case is that before Chief Justice Marshall. If a precedent of honest and eloquent indignation was wanted I would refer to his judgment; but the case itself, like the other, has no bearing on the present. The vessel was "completely fitted in our ports for military operations;" she could have fought at the moment of leaving Baltimore. She might have been subject to the penalties of piracy, but she was not the less equipped and armed for war.

The next case is the United States *vs.* Quincy. I say, with all respect, that the case was wrongly decided. The learned attorney-general confessed it. It supposes that a person can assist in doing what nobody is

doing or trying to do. It applies a pleading test, which is of very little use in discussing a statute, and doubly misapplies it. First. It is not enough to use the words of a statute in an indictment, where, from their position in the statute, they would have a different meaning to what they would have standing alone. Secondly. The objection is misunderstood. Supposing it taken to the indictment, it would be that the indictment should have said, "A. was fitting *and* arming, or attempting to fit *and* arm, and the defendant was assisting to fit." Further, this case does not say that if the principal in the transaction were indicted, anything less than a warlike equipment would suffice; and that is the only question before us.

These authorities, to my mind, if anything, are in support of that view of international law and of the statutes which I have expressed. The history of our statute, the history of the American statute, the duties of international law, and the speeches and acts of jurists and of statesmen, all point to the same conclusion. A like opinion was recently indicated in an important official statement, in which it was said that "England was preventing the departure of hostile expeditions from her shores." This, whether a correct statement in point of fact, I know not; but it is by implication a correct statement of what she is bound to do by international law, and what she has power to do by municipal law.

I am aware of the consequences, if this is the law. A ship may sail from a port ready to receive a warlike equipment, that equipment may leave in another vessel, and be transferred to her as soon as the neutral limit is passed, or at some not remote port, and thus the spirit of international law may be violated, and the letter and spirit of the municipal act evaded. But as the law stands, or as both laws stand, I see no remedy. I do not see what line can be drawn but the sharp line which Sir Hugh Cairns stated. If it is unlawful to put a peaceful equipment on a ship, because at three miles from the neutral territory she is meant to receive a warlike equipment, why is it now unlawful if the distance is to be 1,000 miles, or in this case one of the southern ports? If she may not sail peacefully equipped to a southern port, why would it be lawful to send there her parts, ready to be put together? If not those, why the materials of which they could be made, and so on? I am aware, of course, that it would be easy to draw a line and make a law prohibiting the sending forth of a ship, and permitting the exportation of its parts, leaving that to be dealt with as contraband of war, and that such a law would make a broader distinction between what would and what would not be lawful than now exists, and that its evasion by sending forth the parts of a ship would be more difficult and less hurtful and irritating to the opposing belligerent. Whether such a law would be desirable I do not presume to suggest. What I wish is to show that in considering this as a matter of principle I have borne in mind, first, that the present law is capable of easy and mischievous evasion; and, secondly, that if it is sought to extend it by construction, it is impossible to stop short of the prohibition of the export of contraband of war generally; though, thirdly, a positive law so stopping would not be difficult of enactment.

An argument which I have partly dealt with has already been used, (not indeed before us,) that there may be an attempting or assisting by persons who do not commit the complete offense of equipping or arming. So they may; but there can only be an attempt to commit an offense where, if the attempt succeeded, the offense would be committed. A person can only assist in doing an act where the act is to be done. Now

there is one thing in this section clear beyond doubt, viz, that there can be no offense against it unless that offense is committed within the Queen's dominions; that, therefore, no one can attempt, contrary to the provisions of this act, unless the equipment attempted be meant to be done in the Queen's dominions, and that no one can assist contrary to those provisions unless some one is equipping or attempting to equip within the Queen's dominions. This was admitted by the attorney-general, and indeed is, to my mind, too plain for argument.

[68] *Taking this view of the statute I think that a right direction to the jury would be, If you are satisfied that the parties concerned were equipping or arming, or attempting to do so, the ship claimed, with intent that it should be employed in the service of a foreign prince to cruise or commit hostilities against others, as alleged, find for the Crown; but such equipment or attempted equipment must be of a warlike character, so that by means of it she is in a condition more or less effective to cruise or commit hostilities; otherwise find for the claimant.

Holding this opinion, I think that the direction of the lord chief baron was substantially, if not verbally, correct. Still, in considering whether the jury came to a wrong conclusion, whether the verdict was against evidence or otherwise unsatisfactory, all that his lordship said must be taken into account, and though the proceeding is penal, if there had been an evidence on which the jury could have acted, I should have thought that there ought to have been a new trial, considering that the defendants kept out of the box witnesses who must have known what the truth was. But, interpreting the statute as I do, I think that the verdict was right. I have no doubt that the vessel was building and equipping for the confederates, and in order that they might use her, when armed and equipped, for hostilities against the Federals. This was being attempted, but I see no evidence that it was intended to arm or equip her in the Queen's dominions so as to be capable of attack or defense. On the contrary, I believe it was intended to evade, not infringe, the statute—not to commit a misdemeanor, nor to do or attempt to do what would cause a forfeiture of the ship. I believe, on the evidence, that it was intended to deal with this vessel as with the Alabama, namely, to get her out of the country and give her warlike equipment and armament out of the Queen's dominions. It is worthy of remark that the information does not suggest that it was intended to arm her here. I think, therefore, that this other ground for a new trial fails, and that the direction was right, and that on a right direction the verdict for the defendants was right on the evidence, and consequently that the rule should be discharged.

Mr. BARON CHANNELL. This was an information filed by Her Majesty's attorney-general, insisting upon the forfeiture of a ship called the Alexandra, under the provisions of the seventh section of the foreign-enlistment act.

That section makes certain acts done with respect to a ship misdemeanors. It then proceeds to say that "every such ship or vessel shall be forfeited and may be seized," as therein provided for.

In the present case a seizure has been made, and this seizure had to be justified by the Crown at the trial of the information before the learned lord chief baron. Upon that trial a verdict was given for the defendants, and the learned attorney-general in last term obtained a rule *nisi* for a new trial upon five grounds.

Those five grounds may be ranged under two heads, viz, those of misdirections and of the verdict being against the evidence.

The question as to the verdict being against the evidence necessarily depends in some degree upon the question whether there was misdirection or not, because we must see clearly what were the questions which the jury had to decide before we can apply the evidence and see whether it supports the finding of the jury. The consideration of the evidence would, therefore, whatever view I were to take on the question of misdirection, come more appropriately after than before the consideration of the construction of the statute. But it will be unnecessary for me further to revert to the question of the verdict being against evidence, in the view which, after much anxious consideration, I feel compelled to take of the construction of the statute, and of the effect of the lord chief baron's direction, a view which differs in some respects from the opinions of the lord chief baron and my brother Bramwell, and leads me to a different conclusion to that at which they have arrived, and which, for that reason, and on account of the great respect which I always have for their opinions, I express with the utmost diffidence.

Now, under the head of misdirection, I include an inadequate direction, and also a direction which, though right in the main, would be calculated to mislead a jury. Where the question turns upon the construction of an act of Parliament, the judge is, I think, called upon to explain to the jury the sense in which any doubtful word or expression in the act is to be understood. (See Elliott *vs.* the South Devon Railway Company, 2d Exchequer Reports, p. 725.)

In the consideration of the question of misdirection it will be convenient, first, to endeavor to construe the act and see what direction ought to have been given, and then to consider whether the direction given agrees in substance with what ought to have been given.

The foreign-enlistment act, particularly the seventh section, is very imperfectly worded. There is no doubt that it was in a great measure, but with what appears to me to be important variations, penned from an act of the United States passed in Congress, first in the year 1794, and re-enacted by Congress in the year 1818.

This circumstance has given rise to a great deal of argument on both sides. Sir Hugh Cairns has suggested, apart from the language of the acts of Congress, certain *à priori* views tending to show why the American act was passed and altered: and then, treating the acts of Congress as with some exceptions identical with our own, he seeks to apply certain decisions in the courts of America to the consideration and construction of our own statute. Into this very wide field of inquiry he has constrained the consul for the Crown to follow him, and they have done so in the very order in which his argument was addressed to us. I do not say that any time was lost, or that in the course of the very long argument that was addressed to us any view was submitted not calculated to assist the court; but, having carefully considered the arguments, I cannot help thinking that the decision of this most important question should proceed on grounds less wide than those to which the attention of the court has been so ably called.

[69] Faulty and imperfect as may be the wording of the seventh section of the foreign-enlistment act, * (and more imperfect and faulty wording I can scarcely conceive,) if, notwithstanding all this, the words of the seventh section read with reference to the other part of the act do, by a reasonably fair interpretation of our statute and the evidence, embracing the case of the Alexandra, then, in my judgment, it scarcely becomes necessary to consider what have been the decisions of the courts in America upon acts of Congress

in the main much the same, but in no unimportant respects, different from our own acts.

Whether for the present purpose the foreign-enlistment act is to be considered as a penal statute, the Crown in this case proceeding for a forfeiture of the ship, or is to be considered as an act for the first time creating a criminal offense, the rule to be applied in order to its construction is that which is so well expressed in the passage from the late Mr. Sedgwick's treatise quoted by my brother Bramwell, and to which passage I need not advert in detail; but I may say that it deserves, in my judgment, the high eulogium which my brother Bramwell has passed upon it, and is, I think, in perfect accordance with the American and English authorities which that late learned writer has cited in support of his view.

Now, faulty and imperfect as the wording of our statute, particularly the seventh section, is, there are certain matters clear enough, in my judgment, to be beyond all reasonable doubt. First, the statute is not a statute passed either merely to define what shall be an offense, or to create an offense for the first time, and to define its punishment, but it is in its express intent an act aimed at the prevention of the offense, not as punishment merely. It is, therefore, in every sense a remedial statute; and, secondly, it is a statute intended to remedy a mischief, which, though forcibly expressed, is only contingent and possible, and not certain. The language of the preamble points to certain acts which may be prejudicial to and tend to endanger the peace and welfare of the kingdom; and further, it goes on to recite that the laws in force are not sufficiently effectual for preventing the same. The statute has not, therefore, for its object solely the prevention of acts which, if done, must endanger the peace of the kingdom, but appears from the preamble to be aimed also at acts which may possibly excite such feelings in other nations as will have that effect. This inclines me to think that the equipment of ships to be employed at a future time for war, though not so complete in this country that the ship shall be at once able to commit hostilities, may be within the act.

I do not, of course, come to any conclusion from the preamble alone that such an equipment is prohibited; what we are to look at are the enacting words, but I think that the preamble is, as Lord Coke calls it, a key to unlock the meaning of the act where it is doubtfully expressed; and I concur in the decisions which determine that the words of an enacting clause shall not be cut down or restricted by the preamble.

So that if the case which I have mentioned were clearly within the words of the seventh section, but not within the mischief as declared by the preamble, I should hold that it was prohibited by the act. As my brother Bramwell has remarked, the legislature often finds it necessary, in order to restrain certain acts, to prohibit other acts under color of which the acts to be restrained may be done.

Now this act has clearly two distinct and several objects in view. The first is the enlistment or engagement without license of British subjects to serve in foreign service. There I agree that the statute extends to the whole world, provided the persons enlisting or engaging are British subjects. The second object is the fitting out or equipping in British dominions of vessels for warlike purposes. The part of the act which relates to the second of these objects include all persons, whether British subjects or not, provided the offense prohibited by the act is committed within the Queen's dominions.

I am not insensible to the value of the arguments which have been addressed to us by the consul for the claimants founded on these differ-

ent objects. These arguments raise one of the many difficulties in the case. They do not, however, seriously affect my view as to the conclusion to which we ought to arrive. Prohibition and prevention of a mischief which may be prejudicial to and tend to endanger the peace and welfare of the kingdom were, as I have said, aimed at by the statute. By municipal law every one, whether a British subject or not, being within the dominions of our sovereign, and claiming the protection of the government of this country, may be bound. Out of her dominions the municipal law of this country can only bind the subjects of the realm.

We ought not to lose sight of the first object contemplated by the act and provided for by the first six sections. But it is the part of the act which relates to the second object that principally requires our attention. The last part of the act, beginning at the seventh section, does by that section provide against equipping vessels with a certain intent, issuing or delivering any commissions for ships with the intent therein mentioned, and lastly, for the forfeiture of the ship or vessel. I have said that the forfeiture clause following the clause creating certain misdemeanors applies to "every such ship." This is certainly rather clumsily expressed; but we must take it that every ship is forfeited with respect to which any of these misdemeanors have been committed.

We have, therefore, to see what are the misdemeanors created. They are, first, equipping, fitting out, furnishing, or arming a ship with a certain intent or purpose; secondly, attempting or endeavoring to equip, &c., with the same intent; thirdly, procuring to be equipped, &c., with that intent; and, fourthly, aiding, assisting, or being concerned in equipping, &c., with that intent.

Now it is, I believe, the unanimous opinion of the court that the second, third, and fourth of the offenses here spoken of mean respectively the attempting, the procuring, and the assisting in such an equipment as is spoken of in the first; that is to say, that the secondary offenses, as they have been called, are the attempting, &c., such an equipment as, if completed, would amount to the principal offense. If, therefore, we can arrive at any clear conclusion as to what is the principal offense, the question whether there was any attempt, &c., to commit that offense becomes a mere question of evidence. This being clearly understood, we may, for the purpose of construing the act, disregard all the words about attempting, &c., and aiding, and being concerned in, and so on.

We have, therefore, now reduced the main question in the case to this,

What did the legislature mean by the words "equip, furnish, fit
[70] out, or arm a vessel with intent in order that she should be *employed in the service of a foreign power as a transport or store-ship, or with intent to cruise or commit hostilities against a power with whom we are not at war?" Arming is not charged in the present information; we may, therefore, leave out the words "or arm." The words "transport or store-ship" are also immaterial, now that the ninety-seventh and ninety-eighth counts, charging the Alexandra to be a transport or store-ship, are abandoned, except, always, that we must adopt such an interpretation of the words common or both clauses as they would be capable of bearing when combined with the words "as a transport," as well as when combined with the words "with intent to cruise."

The words "equip," "fit out," and "furnish" seem to me to mean nearly the same thing. Throughout the whole course of the argument in this case little stress was laid upon any supposed difference between the words "equip," "fit out," and "furnish." We may, therefore, still

further reduce the words which we have to construe to these, "equip with intent or in order that the vessel shall be employed in the service of a foreign power, with intent to cruise or commit hostilities."

It is admitted, I think, on all sides that these are the words upon which the main question in the case turns. Now, it is clear that the offense created by these words is one consisting of an act done with a certain intent or purpose. The act and the intent must both be present to constitute the offense, and the act must be done and the intent must exist within the Queen's dominions.

It is also, I think, agreed on both sides that the intent spoken of must be the intent of some person who has control over the vessel so as to be able to carry out his intent or purpose.

We now come to the points on which there is a difference of opinion. The attorney-general contends that any equipment, however peaceful in its nature, will be an offense against the act, provided there is an intent that the vessel shall be used at some future time in the service of a belligerent. He admits that where the equipment is clearly peaceful there will be much greater difficulty in proving the intent, but he says that, assuming that you can prove the intent, then any kind of equipment will be within the case contemplated by the act.

On the other hand, the counsel for the claimants connect more closely the act and the intent; that is to say, they explain the general word "equip" by the subsequent words "with intent, or in order that the ship shall be employed" in a given manner, and they say that these words show that the equipment spoken of is an equipment suitable to the employment. Further, I understand them to go the length of saying that it must be suitable only for that employment.

It is remarkable that the words "or in order that" are not in the American act, but have been added in ours. This will be a subject of remark by and by, when we come to consider the applicability of the American cases. Now we have only to see what difference these words make. Do they enlarge the scope of the act by mentioning another case, another kind of equipment, which is also within the act which, in the course of the argument, I was much disposed to think was the right view, or do they rather restrict the previous words, explaining them, and throwing a light upon them, as suggested by Mr. Mellish? It seems to me now that the latter view is the right one, and that the words "or in order that" restrict and explain what is meant by "with intent" rather than include any new case not before included. If I do an act which is entirely immaterial to the employment of the ship, as painting her name on her stern, I may do that having all the time the *intent* that she shall be employed in a given manner, but I cannot do it *in order that* she may be so employed, for it has no reference or relation whatever to her employment, and does not further her being employed in one way more than another.

Thus there may be an equipment "with intent that," which is not an equipment "in order that." But can there be an equipment "in order that," which is not "with intent that?"

The attorney-general has suggested that there *may*, or at all events the framers of the act thought there might. He argues that the words were inserted to meet the arguments that builders and other tradesmen are not parties to the intent; but he says, at all events they may be said to do it "in order that." But is it clear that a man can do an act *in order that* a result may follow without intending that result? Does not every man intend to effect the object of his act? If, however, we do suppose such a case where a man, without having the intent that

the ship shall be employed in a given manner, yet equips her in order that she may be so employed, is not the inference as strong as possible that the equipment must in that case be of a nature suitable and appropriate for that employment? It seems, then, that if we are to give any force to the words "in order that," it must be as explaining and illustrating the words "with intent that."

It may also be remarked that in this information the charge is that certain persons did equip the Alexandra "with intent and in order that," &c. This shows that whoever drew the information supposed the two expressions to mean the same thing. I do not attach much importance to the last remark, for if we ought to decide them to be different, then I think the words "and in order" in the information might be rejected as surplusage.

It seems, then, on the whole, that in order to justify the seizure the Crown must show an equipment (either completed or attempted) of the Alexandra, *in order that* she might be employed, &c.; and, further, that this necessarily means an equipment enabling, or tending to enable, her to be so employed. This last conclusion I draw also from the nature of the words "equip, furnish, and fit out."

I do not adopt the idea that any one of these words can include building. The attorney-general at one time seemed disposed to contend that fitting out might include building. I do not think that he adhered to that throughout. If he still holds that opinion, I certainly differ with him upon the point. I do not pretend to say whether any particular act, as for instance the fixing the ship's bulwarks, is part of the building or part of the equipping and fitting out. That, I think, might be a question for the jury. I do not even say that acts done to the structure of the vessel may not be equipments. I should say that you were equipping a ship for an Arctic expedition by strengthening her framework in order to enable it to resist the pressure of the ice. But I say that equipping, fitting out, and furnishing are all acts subsequent in their nature to the building, and in speaking of which you contemplate the ship as already in existence.

I think there is nothing contradictory to this view in the cases
[71] cited by the attorney-general, *viz, the United States *vs.* Guinet, in Wharton's State Trials, the ship Brothers, and the ship Mermaid, both in Bee's Report.

What it seems to me that these words "equip, furnish, or fit out," do all signify is this: Contemplating the subject-matter of the equipment as already in existence, they express an idea of preparing it for some purpose or another. That purpose may be either expressed or implied. When you speak of "equipping a ship" *simpliciter*, it may be that that means getting her ready for sea, because to go to sea is the natural and ordinary use to which a ship is put. If you state the nature of her employment, then equipping means getting her ready for that employment. I interpret the words, therefore, as showing that the equipment spoken of in the seventh section must, as a matter of fact, be an equipment for the employment spoken of.

If we are left in doubt whether this is the right interpretation or not, I think, as I said before, that we may and ought to look at the preamble to see the object of the act. There we find that the mischief to be remedied is one which may arise from the fitting out and equipping and arming of vessels for warlike operations. This, then, is the very case which I have interpreted the seventh section to strike at, provided that the employment there mentioned is an employment for warlike operations. What is the employment there mentioned? "Shall be employed

in the service of a foreign prince, with intent to cruise or commit hostilities." It has been assumed in the argument on both sides that this may be read as if the words "with intent" were there omitted, as they are in the American act. Whether this is right or not, their insertion certainly causes great confusion. In the first place it provokes comparison with the other clause commencing "with intent," causing one at first sight to read them as showing alternative intents, either of which would, with the requisite act, constitute the offense. This, on looking into it, is agreed on all sides not to be the right construction. But they create a further difficulty. This intent now spoken of is necessarily from the collocation of the words, "shall be *employed with intent*," an intent of the employer, and not of the equipper, which is, as it were, ingrafted upon the intent of the equipper: and it is very difficult to see how one man can intend that another man shall intend something or other. It is probably this difficulty which has prevented the counsel on either side from founding any argument upon these words. But for this I should have thought it might have been argued that an employment with intent to cruise differed from an employment to cruise in this, that it might include an earlier employment, and might cover the voyage in an unarmed state from one port to some port where the vessel was to be armed, and from which she was to start to cruise. But even if I adopt the view taken by the attorney-general that an employment with intent to cruise may be construed the same as an employment to cruise, I think that an equipping, in order that the vessel may be employed to cruise or commit hostilities, means an equipping for warlike purposes. So far, then, I think, it is clear that there must be an equipment for war, and that an equipment which cannot be used, and is not useful for war, will not do. The conclusion at which I have so far arrived is drawn from the seventh section, with such light as is thrown upon it by the preamble and by the second and eighth sections. In drawing that conclusion I agree in a great measure with the argument of the claimants, with the judgment of the lord chief baron and my brother Bramwell.

But another, and, to my mind, very important and difficult question arises. Suppose that there is evidence of some equipment or other, either completed or attempted, but that the equipment does not in itself show whether it is an equipment for war or not, may we take into consideration evidence of the intent to prove that it is actually and in point of fact an equipment of war? Upon this question, after much anxious consideration, I have arrived at the conclusion that we may. I do so with the most sincere and respectful deference to the opinions of the lord chief baron and my brother Bramwell, and with great distrust as to the correctness of my own judgment.

It will be convenient, now that I am about to consider whether the character of the equipment, where doubtful, may be explained by the intent of the parties, to see what effect the clause "as a transport or store-ship" has upon the interpretation of the section, because it is especially in the case of a store-ship that we see the absolute necessity of explaining the character of the equipment by the intent. Now, is there anything which militates against the view that the equipment with intent or in order that the ship may be employed in a given manner, means an equipment suitable to that employment, in the fact that one of the employments spoken of is "as a transport or store ship?" It may well be that there is no equipment specially suited to a store-ship. All equipments of an ordinary merchant-vessel may be and probably are suitable to a store-ship. But is it any reason for saying that the

equipments struck at by the act are not equipments suitable for a store-ship, because being so they would be also equipment for another object? Is a gun the less an equipment for war because it may be used for firing salutes?

But the counsel for the Crown deduce from the case of the store-ship, as it seems to me, a very important argument; they say that in that case the jury must necessarily look at the evidence of the intent to enable them to say whether the equipments are for a store-ship or not; and if so, why are they not to look at the evidence of the intent to say whether certain equipments of a doubtful nature are for warlike purposes or not? I grant at once that they may, provided that the equipments as to which the doubt exists are such as can be directly used for war without further addition. They might, of course, if they were in doubt as to whether a gun was an equipment for war, look at the evidence of intent to satisfy themselves that it was not intended to be used simply for firing salutes. But the question is more difficult, supposing that the equipments are such as can only be used for war by some addition being made to them. Suppose a jury to find, as a matter of fact, that a certain vessel is intended to be sent to the West Indies, and then to have put guns on board—that when her guns are on board the mainsail with which she has been equipped in Liverpool may assist her in chasing the enemy's vessels; are they then justified in deducing from that, that the mainsail is an equipment in order that she may be employed to cruise? I have, after giving the question my best consideration, come to the conclusion that the jury may so reason. I am supposing a case where an equipment is made which, though not in itself sufficient to make the vessel a war-vessel, is still a necessary part of the equipment of a war-vessel. It would, as it strikes me, be a
[72] question for the jury to consider *whether the equipments are, in fact, equipments for war; and they may decide that question for themselves by the nature of the equipments if they sufficiently show it, (in which case they will have to look to the intent and purpose only so far as to see that the vessel is to be employed against a power with whom we are at peace,) or they may decide that certain equipments which are capable of being used for war are, as a matter of fact, equipments for war, on the ground of evidence being laid before them showing an intent so to use them. But if a jury found specially these facts, that A. B. had equipped a vessel which was in its structure capable of being converted into a war-vessel to the extent merely of enabling it to sail away from this country; that he knew that the purchaser intended to convert it into a war-vessel; but if the jury also distinctly found that what A. B. did to it was done not in order to convert it into a war-vessel, or in order to be useful to it when so converted, but simply in order to enable it to reach a port where the purchaser might, if he pleased, convert it; in such a case I do not mean to say that A. B. ought to be convicted of a misdemeanor under this act. That case would not, I think, be within the act, because the jury would there in effect find that the intent with which the act was done was a different one from that mentioned in this section. So far, then, as to what may be called the principal offense.

There remains for consideration the "attempting" and the "aiding and being concerned in," &c. I have said that the attempt must be to do the act which has been made an offense by the previous clause. The equipment attempted must therefore be an equipment in this country, and of the nature which I have described. In this the counsel on both sides, and all the members of the court, are agreed. Where an

attempt is charged, we contemplate an equipment commenced but not interrupted. In that case the jury will certainly have still more difficulty in seeing whether the equipment is an equipment for war, but in my judgment they may so find upon evidence not of the nature of the equipment but of the intent of the parties, provided always, that the nature of the equipment so far as it appears is such that it *can* be employed for warlike purposes. The same rule applies to the assisting and being concerned in equipping. It must, in the opinion of the jury, be an equipment for war, but I think that their opinion may be formed either from the nature of the equipment or from the intent.

Having arrived at this construction of our statute, I will refer shortly to the cases cited from the American reports, for the purpose for which, and which only, I think they ought to be noticed, that is, to see whether there is anything in the opinions of the learned judges of that country, for whose opinions I have the greatest respect, which were delivered in cases to some extent *in pari materia* with the present, which ought to make me pause or review the interpretation I have adopted on looking at the words of our own statute. The cases cited are the cases on the point of what the meaning of equipment is, to which I have already referred; and beside these there are the cases of the United States *vs.* Quincy, in 6 Peters, and the United States *vs.* Gooding, in 12 Wheaton's Supreme Court Reports.

In Quincy's case the portion of the decision which is material in our case was this: that it was not necessary that the jury should find that the vessel when she left the United States was armed, or in a condition to commit hostilities, in order to find the defendant guilty. The court do not say that she need not be equipped for war, but only that she need not be completely equipped. This view, then, coincides with the view which I have taken of our act. It may be that some of the other points decided in that case are not very intelligibly reported, or even not accurately decided; but, at any rate, there is nothing decided but what is in accordance with my interpretation of our act. Even if there had been, I think that the insertion of the words "in order that" in the English act, words to which I attach a certain importance, and which are not found in the American act, and the omission in the English act of any words corresponding with the tenth and eleventh sections of the American act, might cause me to hesitate before acting on the authority of that case. I think that the tenth and eleventh sections in the American act tend to show that the third section in that act is less restrictive than the seventh section of our own.

The United States *vs.* Gooding was the case of a supposed slaver. The statute, on the construction of which the case turned, was very similar to the act which we are considering. It was held in the case that it was "an act combined with an intent, and not either separately, which was punishable." It was decided that the equipment need not be a complete equipment, but that a partial equipment was sufficient. There are also words in the decision which would seem to show that the equipment must be an equipment for the purpose of a slave voyage, as a matter of fact, though it might be only a partial one. It is said, "whether the fitting out be fully adequate for the purposes of a slave voyage may, as matter of presumption, be more or less conclusive; but if the intent of the fitment be to carry on a slave voyage, and the vessel depart on the voyage, and her fitting out is complete as far as the parties deem it necessary for their object, then the statute reaches the case." That seems to me to amount to this, that there must be a fitting out, in point of fact, for a slave voyage; but either the intent or the nature of the fitting may de-

termine whether it was for that purpose. This agrees with the conclusion to which I have arrived.

I now proceed to consider what questions ought to have been left with the jury. Disregarding any question as to the proper style of the Confederate States, which is no doubt sufficiently laid in the information, the questions, if my views as before explained be right, should have been—1st. Was there an intent on the part of any one having a controlling power over the Alexandra that she should be employed in the service of the Confederate States to cruise or commit hostilities against the United States? 2d. If so, was she equipped, fitted out, or furnished in a British port in order to be employed to cruise, &c.? 3d. If not equipped, was there an attempt to equip her in a British port in order that she should be so employed? 4th. Or did any one knowingly assist, &c., in such equipment in a British port? I do not, of course, mean to say that the questions should have been left to the jury precisely in the words which I have stated; but I think that, in substance, these questions should have been put. Now, with great submission, I doubt whether the substance of these questions was so left to the jury that they would be likely to understand rightly the points which they had to decide.

The question finally left to the jury seem to me to be correct as far as it goes. The lord chief baron says, "Was there any intention that
[73] in the port of Liverpool or any other port she should be *equipped, furnished, fitted out, or armed with the intention of taking part in any contest?" That, I think, so far as it went, was right; but, in my opinion, it ought to have been accompanied by some further explanation than was given of the words "equip, &c., in order that." Further, I think the jury ought to have been directed that they might form their opinion as to whether she was to be equipped with the intention of her taking part in any contest, either from the nature of the equipment or from any evidence before them as to the intention of the parties with respect to such equipment if they thought it *ancipitis usus*. I think further that, though there may have been no equipment completed, the question whether there was an attempt at such an equipment as would, if completed, have been within the act, should have been distinctly left to the jury. This was not left to them as a separate question, though it may have been, and, on the whole, I think it was included in the question, "Was there any intention that she should be equipped," &c. It has been contended by the Crown that, besides these objections to the sufficiency of the summing up, there are other expressions in it calculated to mislead the jury. The lord chief baron remarked in strong terms upon the analogy of selling gunpowder and other articles, in short, whatever can be used in war for the destruction of human beings, to a belligerent, and concluded this part of his observations with the words, "Why should ships be an exception?" adding that, in his opinion, in point of law they were not. The question, "Why should ships be an exception?" is repeated in another part. Now, if these observations were understood by the jury to apply to a state of things existing under the provisions of, or with reference to international law alone, and quite irrespective of any municipal law, they would be, I think, unobjectionable; but they were, in my humble judgment, calculated to mislead the jury, unless attention was distinctly drawn to the fact that this statute, whatever be its true construction, does certainly place equipped ships in a different position to other contraband of war.

The chief baron again used expressions which it is said may have led the jury to understand him as drawing a distinction between equipping without an order, and equipping in obedience to an order, instead

of distinguishing between equipping and building, which I now understand to be the meaning he attributes to the words with respect to which this complaint is made; and it is a meaning which I think they may fairly bear, and would necessarily bear if the clauses were inverted, as was suggested by me in the course of the argument, and as I understood was assented to by the learned attorney-general.

Again, the lord chief baron having stated that a man may sell an armed ship to a belligerent if he has it ready, which is, I think, correct, proceeds, as I understand, to draw from that a conclusion that he may make one to order; and possibly he may *build* a ship, but he may not equip it in order that it may be employed for war. Now, if the chief baron is to be understood as saying that a man may make to order the same kind of vessel as he may sell when he has it ready, that is to say, a vessel equipped and armed, then such a direction in my opinion would be erroneous; and I cannot help thinking that a jury would understand the lord chief baron to mean that.

Again, the lord chief baron said that he would not leave to the jury the question of what service the vessel was intended for. This I think should have been put. It may be that the lord chief baron thought, not that it did not arise or become material in any event, but that it might be assumed in favor of the Crown, as the facts were in evidence, for he proceeded to say that the question was whether the vessel was built or in the course of building. If the jury thought, as the chief baron seems to have thought, that the ship was not completely built, and therefore no equipment or fitting out could have been even commenced, the question of intent would not arise. But that was a question for the jury; and it was only in the event of their finding that question in one way that the question of the service for which the vessel was intended became immaterial.

Further, it is complained that the lord chief baron directed the jury that equipping, fitting out, and furnishing, all meant the same as arming. This we now understand him to say he did not do, but only expressed his opinion that they did.

It is clear, however, that the learned lord chief baron did not direct the attention of the jury to the point whether there was an equipment (completed or attempted) of a character doubtful in itself, but still capable of being used for war, which was to their satisfaction established to be an equipment for war by the evidence of the intent of the parties. And this, I think, should have been left.

I adopt the proposition stated by the counsel for the Crown, that a summing up which, fairly considered, has, on the whole, a tendency to mislead a jury upon a question of law, upon which they ought to be guided by the opinion of the judge and not to form their own opinion, is open to the objection of misdirection.

As was remarked by the attorney-general in his able argument, the learned lord chief baron was obliged to deal on the trial with a difficult subject, and, as was said by the attorney-general, it is not wonderful if in some things his lordship may have omitted to have made observations which he would have made, or have made observations which he would not have made, had it been otherwise. Yet, I am not prepared to say that I find in the summing up of the lord chief baron, delivered as it was, under these circumstances of difficulty, any statement of law which is, in my judgment, absolutely erroneous. But it does seem to me that the explanation given of an extremely difficult and obscure act of Parliament was not so full or so clear as a jury ought to have had in a case of so great importance, and certainly not so full as the jury will have if a new

trial is granted, now that the subject has been so amply and so ably discussed. I think also that there are expressions in the summing-up which a jury would probably have misunderstood; so that, on the whole, I think that we ought to grant a new trial on the ground of misdirection, including, as I do in that term, inadequate expressions calculated to mislead the jury.

Taking this view, I need not revert to the question whether the verdict was against evidence; or whether, supposing it to be so, the present case ought to be assimilated to a penal action, in which case the rule is, that a new trial is never granted *solely* on the ground that the verdict is against the evidence. I expressly refrain from offering any opinion whether the verdict found by the jury in this case was or was not, in my judgment, the right one. But I say that it was an unsatisfactory verdict because it may have proceeded upon a misapprehension of the law and of the questions to be decided.

[74] *It is a satisfaction to me to find that my brother Pigott has arrived, in the result, at the same conclusion with myself, although his reasons for doing so may not be entirely the same as my own. It is also a satisfaction for me to known that although I differ from the lord chief baron and my brother Bramwell in the result, there are many broad points of agreement between us. I agree with them in thinking that what this statute forbids is an equipment for war. I agree with them in thinking that the main object of the statute was to prevent our ports being made stations of hostilities. Our difference appears to be this: that they think the equipment must be intended to be completed so that the vessel when it leaves our port shall be in a condition at once to commit hostilities; while it seems to me that in the fair and reasonable meaning of the words used, another case is included, viz, where the equipment, not being completed to that extent, is yet capable of being used for war, and the intent is clear that it is to be used for war. I say that the fair and reasonable meaning of the words includes that case, and that we should judicially construe the act to include it.

It may be said that the manner in which I have considered this case, by a minute scrutiny of the words of the act, is a mere lawyer's method of viewing the matter; that in a case of this kind it is our duty to take a broader view, to take into our consideration the principles of international law, the duties of nation to nation, and even the opinions of great statesmen on those duties. I, for my part, have no ambition to decide cases in this court in any other capacity than that of a lawyer. In days long past judges, I think, often invaded what we now consider the sole province of the legislature. They interpreted statutes to include cases which they assumed to think ought to have been included; thus not merely constituting themselves legislators, but generally also legislators *ex post facto*. That I think will never be done again. As long as acts of Parliament are drawn as they are now, the office of construing them will be no sinecure, though we have but to interpret the law, and not to make it. If it is for the interest of the nation that the law should be other than we interpret it, if our construction of this act of Parliament may endanger the peace of the nation, then I say that it may be the duty of Parliament to enact a new law; but it is not our duty to look elsewhere than at the present statute for an interpretation of it.

Mr. BARON PIGOTT. The rule for a new trial in this case has been drawn up on seven different grounds. We have, however, to consider them as practically reduced to two, and accordingly the arguments were directed to impeach the general verdict which was found for the claimants of the ship, the Alexandra: first, upon the ground that the lord chief baron

had misdirected, or had insufficiently directed the jury in point of law; and, secondly, that the verdict was against the weight of evidence.

The material facts disclosed in evidence on the trial were that the vessel, the Alexandra, was built by Messrs. Miller, who stated that she was for Messrs. Fraser, Trenholm & Co., agents of the southern confederacy; that she was launched in March, and at the time of the seizure, on the 5th of April, the defendants' workmen were variously engaged in fitting her with stanchions for hammock-nettings; that her three masts were up, and had lightning-conductors on them; that she was provided with a cooking-apparatus sufficient for 150 or 200 people; that her build was apparently for a gun-boat with low bulwarks, over which pivot-guns could play; and her hatches were too small for merchandise; in fact, that she was not qualified for mercantile purposes. No evidence was called for the defense. The contention upon the trial, as upon the argument before us, was that upon the true construction of the seventh section of the statute, the foreign-enlistment act, the evidence disclosed no illegal act done or attempted in reference to this vessel which worked its forfeiture.

The lord chief baron's direction to the jury is before us at full length, and I proceed to consider the objection to its sufficiency, and the arguments which were addressed to the court thereupon. It is clear that the construction of a statute is for the judge, and there are, no doubt, many statutes which are so unambiguous in their language that it is quite sufficient to read the words to the jury without explanation or comment. A judge has a right to assume that the jury whom he is directing are persons of ordinary intelligence, and in his direction to them to treat them as such. But there are a variety of statutes of quite a different character, and which persons of intelligence, not accustomed to the consideration of the artificial language in which acts of Parliament are frequently framed, require to have fully and carefully explained. In such cases the duty lies upon the judge to give the necessary explanation, and to evolve the question of fact which the jury are to decide. The statute in question is, in my opinion, clearly one of this class, and we have to see whether, upon the whole, the jury were sufficiently directed on the true meaning of the seventh section of the enlistment act, so that they would clearly understand the issues of fact which they had to try. In order to determine this it is necessary to ascertain the construction which the seventh section ought to bear, and I propose to examine the arguments which were addressed to the court to guide us in our decision.

As to one class of these arguments, I felt great doubt whether they could be legitimately addressed to us for the purpose of expounding a municipal statute; and certainly I do not consider myself at liberty to look upon them in any other light, except as matters of history as to the state of our law at the date of this statute. I allude to the debates in Parliament, the correspondence of English and American ministers of state, Mr. Hamilton's rules of 1793, and the writings of modern historians.

But a second class of arguments was founded on the state of international obligations as between neutral and belligerent nations, and which it was argued the legislature, by the seventh section, intended to enforce upon the subjects of the Crown.

This argument necessarily embraced a very wide field, and no doubt those obligations are the foundations of this legislation; but, in my opinion, they are pushed too far, if urged as the necessary limit of a municipal enactment. A belligerent would have no right to complain

of a neutral state so long as it is not affected by hostile acts, or until aid be in some way actually afforded to its adversary; but the neutral state as between itself and its own subjects may find it expedient so to
[75] legislate that *between the attempt to commit acts of hostility and the completion of them by their subjects, an opportunity would be afforded to arrest such completion; and where the object is a prevention of mischief on which the peace of the country is supposed to depend, I should expect *à priori* that such would be the course adopted. Be this as it may, the consideration of the subject can for the present purpose be serviceable at the utmost where the language employed in legislation is in itself really ambiguous, and I think that it cannot be carried to the extent of creating an ambiguity which does not otherwise appear. It is not necessary for me to determine whether this branch of argument is otherwise well founded by a comparison of international obligations with the actual provisions of the act, for it is admitted that, to some extent, the latter go beyond them.

A third head of argument was founded by both sides on the language and provisions of the American statute. Doubtless it had the same general object, is framed *in pari materia*, and was the forerunner of our statute. In these circumstances I see no objections to making a comparison of the language of the two, and seeing whether by their marked agreement or variance any doubtful meaning of the English legislature can be more certainly ascertained. And in the same way the authorities of the American courts may serve to guide, though not to govern, our judgments. Now, with reference to the corresponding section of the American act, as compared with the English statute, it is impossible, on the most cursory glance, not to perceive that, although the former was (judging by the similarity of language) taken as the model of the latter, yet that our legislature has made very material variations from it. Of these the very prominent ones are the use in the English statute of the disjunctive for the conjunctive, the extending of the prohibition to equipping transports or store-ships, the addition of the words "or in order" to "with intent," and the omission in the forfeiture clause of the materials for building the ships—alterations which can only have been made with some object at least.

As regards the American authorities, the case of the United States *vs.* Quincy, in 6 Peters's Reports, is most relied on by the Crown. The decision must be admitted to be open to some criticism. There was in that case certainly evidence of hostile preparations, and neither of the questions answered by the court is exactly in point. But it does, nevertheless, appear from several parts of the judgment that the court would, if necessary, have gone the length of holding, as, indeed, they say in terms, "that the offense consists principally in the intention with which the preparations were made;" and again, "It is the material point on which the legality or criminality of the act must turn, and decides whether the adventure is of a commercial or warlike character." From this and other passages in the judgment, I infer that they were disposed to disregard altogether the nature of the preparations.

I pass now, however, to the head of argument addressed to us by both sides, and on which, in my opinion, the judgment of the court must be mainly based, viz, on the examination of the statute itself, its object, preamble, and enacting language; and I own that, were it not for the great difference of opinion which seems to exist, I should not have thought it so difficult to construe as it would thence appear to be. It is a municipal act, and is to be construed according to the ordinary import of the language employed. This was the rule of construction stated by

Baron Parke in Lyde *vs.* Barnard. The rule of construction is also clearly stated in the Sussex peerage case, by Chief Justice Tindal; thus: "If the words are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense; the words themselves do in such case best declare the intention of the lawgiver." And I confess I approve, as applicable to this statute, (as to the character of which I agree with the remarks made by my brother Channell, though I say it now with deference, after the lord chief baron's observations,) of Lord Coke's rule in Bonham's case, where he says, "The good expositor makes every sentence have its operation to suppress all the mischiefs; he gives effect to every word in the statute; he does not construe it so that anything should be vain and superfluous, nor makes exposition against express words."

Bearing in mind these rules of exposition, I find that the foreign-enlistment act plainly recites the mischief, and the cause of it which it is designed to prevent, viz, "The fitting out and equipping, and arming of vessels by Her Majesty's subjects without Her Majesty's license, for warlike operations, which may be prejudicial to and tend to endanger the peace and welfare of this kingdom." This language is tolerably plain, and I pass on to consider the enacting clause, where the mode of prevention is stated.

The language of it is varied, and as I think in some respects studiously varied, from that of the preamble. There is introduced into it the additional word "furnish;" the copulative "and" is changed into the disjunctive "or," to connect the four much-debated words; instead of the expression "fitting, and equipping, and arming of vessels for warlike operations," which is the language of the preamble, the expression is "equipping, furnishing, fitting out, or arming, of any ship or vessel with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, &c., as a transport or store-ship, or with intent to cruise or commit hostilities," &c. It is agreed on all hands that the latter words, "with intent," may be taken as omitted here. The clause is also directed not only against the principal offenses stated in the preamble, but also against any attempt to commit them, and also against the knowingly aiding, assisting, or being concerned in them; offenses expressly, of course, mentioned for the purpose of the forfeiture. The enacting clause, therefore, is more extensive than the preamble; but I take it to be a clear rule of construction, that where that is the case, effect must nevertheless be given to the larger word of the clause.

It would be unnecessarily lengthening my judgment if I attempted to review all the arguments on this part of the case. I shall therefore confine myself to noticing some of them in the course of stating my own views. And first, I do not think that the legislature have used any apt words to prohibit the building a hull of a vessel as contradistinguished from equipping it for sea, and for other purposes. It seems to me that if such had been the intention, it would have been done plainly by the use of the word "build" before the expression "equip," &c., and that it is impossible for a court to guess that such might have been the meaning, as was argued by the attorney-general, from the use of so doubtful an expression as that of "fit out," rendered more doubtful, for such a purpose, by its collocation in the sentence, not standing even in the position which it occupies in the American statute—namely, first—

[76] *but placed among expressions plainly signifying acts done on a vessel in existence. And when reference is made to the forfeiture clause, it is to be observed that neither the "hull" nor the "building materials" are enumerated there; but, as before observed, the latter

words, which were to be found in the American act, appear to be studiously omitted, and no equivalent ones are substituted. The subject was one too prominent to have escaped the observation of the framers of the statute, and I am led therefore to infer that the legislature had reasons for not interfering with the ship-building trade, as such in contradistinction to the business of equipping ships. It may have been because of its extent and importance, or the legislature may have hoped to prevent the mischief aimed at by less objectionable means, or (and I think that most probable) it may have considered that ample time would be afforded between the completion of the hull and the equipments necessary to enable it to leave the port, during which its destination being ascertained, if illegal, a seizure could be effected. Whether I am right in these suggestions or not, I find no distinct prohibition against the building of a hull or vessel; and I feel bound therefore to say, that by building merely no forfeiture is incurred. But I am of opinion that any act of equipping, furnishing, or fitting out, done to the hull or vessel, of whatever nature or character that act may be, if done with the prohibited intent, is expressly within the plain language, and also within the evident spirit of the statute. The intent I take to mean an intent of the principal (who has control of the ship) having directly for its object the employment of the vessel by a foreign state, and in the equipper a like intent, and with such intent a contributory equipment of some kind necessary to such employment; and it is evident that the intents need not be derived solely from the nature of the equipments, but may be proved *aliunde*. It may not be easy to define, in all cases, the exact point at which the building of the hull ends and the act of equipping or fitting out begins, but that in each case would be for a jury to decide.

I will now state some reasons for the construction at which I have arrived. I feel bound, where the legislature has used different expressions having different meanings, and has coupled them with the disjunctive "or," not to treat them as if they were coupled with the copulative "and," or as merely redundant expressions, unless I am compelled by the context to do so, but to give effect to each of them so far as they will admit of it, unless I thereby find that manifest injustice or absurdity will result. I do not find that in the present case, and I therefore do suppose that the legislature attached different meanings to the several expressions. I further think it impossible to believe that the word "and" in the American statute should have been so pointedly changed to "or" by our legislature without some object.

It was argued that the four expressions are to be construed as *ejusdem generis*, the word "arm" being the distinctive feature; but, in my judgment, the use of so many as four different words can hardly have been meant to express precisely the same thing; and it is obvious that the words "equip, furnish," and "fit out," are used in the section, for some purposes at least, to signify something different from the word "arm." For instance, as applicable to a transport or store-ship, they are so used. Then these words being there used, as they must be, to signify peaceful equipments, it would seem a very forced construction to say that they exclude the same meaning when applied to a ship intended to commit hostilities, although that ship equally requires peaceful equipments with a transport or store-ship.

But it was urged, and more particularly by Mr. Mellish, that the several expressions may have a several effect given to them, only that their meaning should be restricted to equipments of a distinctive character, according to the nature of the ship; and, therefore, that a ship intended for war must have warlike equipments.

I think that this construction would, in effect, be introducing into the statute words that are not to be found there, which is quite as objectionable as striking out words which are there, or it would be changing the collocation of the language for the purpose of forcing its meaning; for it is not said in the statute that those equipments alone are unlawful which shall make the ship fit in all respects for its purpose, whether as a store-ship or to commit hostilities; but those equipments are unlawful which are supplied with intent that the ship shall be employed in the service of a foreign state, and then the several services in which it shall not be so employed are enumerated, the service of committing hostilities being only one of them.

Again, it is admitted by the claimants' counsel that a complete equipment is not necessary to the violation of the statute, but that a partial one is sufficient, if of the distinctive kind; and further, that as regards a war-ship any warlike equipment, even short of arming, is forbidden. The consequence would be that you may not put one gun-carriage or gun on board without a violation of the statute, and yet by such partial warlike equipment the ship would be no more in a position to commit hostilities than she would if she was only peacefully equipped. But it seems to me that a strange result would be produced if we were to hold that the statute intended to prohibit only warlike equipments in a ship of war, founded on the words "equip with intent to commit hostilities," which was Sir Hugh Cairns's argument; for that reasoning would drive us to say that only such warlike equipments are forbidden as would enable the ship to commit hostilities, as was argued in Quincy's case. The consequence would be that this vessel might have its pivot-guns on board, and yet no offense be committed against the statute, because without the cannon-balls and powder her equipment would still be useless for actually committing hostilities; so that if the intention really were to go out of port equipped with a full armament, but not to receive her ammunition on board until she was out of the English waters, the seventh section would still not be violated.

Again, with reference to the necessity of distinctive equipments, I have not heard that there are any such applicable to a store-ship, except the ordinary peaceful ones which a merchant-ship requires. And if the argument of distinctive equipments will not hold as to all the several ships pointed out by the statute, I do not think that I have a right to apply it arbitrarily to one class, viz. to ships equipped with intent to commit hostilities.

As regards the meaning of the several expressions, and the necessity for the use of them in the statute, it may be that the word "equip" [77] in its largest sense would alone have sufficed; but probably *an interpretation clause would have been requisite, as it certainly means different things when applied to different subject-matters. In Falconer's Marine Dictionary it is defined as "a term frequently applied to the business of fitting a ship for sea or arming her for war," and I think, therefore, the other expressions may be regarded as in the nature of words of interpretation of the possibly ambiguous expression "equip," and meaning the same as if the words had been a prohibition of equipment, including ships' furniture of all kinds, and arms. But because the word "arm" is added to the others in order fully to express a complete description of the equipments peaceful and warlike of a war-vessel, I feel it impossible to say that I ought so to construe the section as to deprive the other expressions, to which it is superadded, of their ordinary meaning. I do not, therefore, in the result find any reason for this distinctive construction. In my view the prohibited intent is the

main ingredient, and any act of equipping done in furtherance of that intent will constitute the whole offense; for assuming the same intent to be present in two persons, I do not see the difference between the agent who did put on board this ship the cooking-apparatus sufficient for 150 or 200 men and fitted the stanchions, and the man who might have put on board a pivot-gun to have played over the low bulwarks, when ammunition should be supplied by some one afterward. Both would be acting with a common object, and the part contributed by each would equally conduce to the fulfillment of it.

Before I could come to the conclusion contended for by the claimants in the absence of plainer words to that effect, I must believe that the legislature, when enacting a forfeiture and power to arrest a vessel, meant to deprive itself of all reasonable opportunity for exercising that power, and that, too, when the avowed object is to prevent the vessel leaving the English port, and not merely to punish offenders by indictment afterward. Upon this restricted construction it is practically plain that the statute would be set at defiance in one of two ways, either as was done by the Alabama, whose armaments went out in another ship, or by completing the peaceful equipments first, and then putting on board the guns as the last act in port, probably occupying a few hours at most, and giving no opportunity of seizure and prevention. In fine, I see no more reason for saying that the ship must, in order to violate the statute, be so equipped in our ports with arms as to be ready to commit hostilities on leaving them, than for saying that she must be sufficiently manned also, without which she would certainly not be in such a condition. I cannot so restrict the statute by construction without feeling that I should virtually repeal it.

In arriving at my construction, I do not feel pressed by Sir Hugh Cavins's argument of inconsistency in drawing so sharp a line between the building and the equipping, for the same might be said of the distinction which does not exist between selling an armed vessel to a belligerent and arming one with the requisite intent under an order of the same purchaser; the line is equally sharp, and the only difference is in the place where it is to be drawn. Indeed, this argument is rather to be addressed to the lawgiver than to the expounder, if there be inconsistency in the legislation. Admitting, as I do, that there is inconsistency in the state of this law as to what is lawful and what is not, I believe, nevertheless, that the lesser amount of inconsistency is incurred by adhering to the ordinary meaning of the language employed as I have above construed it.

Upon this view of the statute, in my opinion, the proper direction to the jury would have been that they should first look to see whether the equippers had had the intention which I have above mentioned, together also with the intent of the principal as explained by my brother Channell; and, secondly, whether with such intent they had done any act toward equipping, furnishing, or fitting out the ship, beyond the mere work of building the hull of the vessel, or had attempted or endeavored so to do; and I agree with the definition of the attempt which my brethren have given. But looking at the whole of the direction of the lord chief baron, (which I need not criticise at length after my brother Channell's judgment,) although his lordship does appear to have left the question of equipping, furnishing, or fitting out to the jury in the alternative, yet I think there are other passages of the summing up which are inconsistent, and which would have a tendency to mislead them. I need not recapitulate them, as my brother Channell has done so at full length, and I therefore conclude by saying that

I think that the jury should have been distinctly told that the intent as before defined being established to their satisfaction, any act of equipping in furtherance of such intention would be unlawful within the meaning of the statute.

I am also further of opinion that, even if my construction of the statute be incorrect, and if it ought to be construed as Mr. Mellish contended, that is, as prohibiting only equipments of a distinctive character, yet that upon the evidence above stated, there was sufficient upon which to direct the jury that the claimants had supplied distinctive equipments within that meaning of the act. The evidence to which I allude is the proof of the fitting stanchions for hammock-racks and the cooking-apparatus for a crew of 150 or 200 people to a war-vessel. I do not find that such direction was given, and I am therefore of opinion that, upon the ground of an insufficient direction, there ought to be a new trial.

On the other ground, that the verdict was against the evidence, I agree with my brother Channell, that it is unnecessary for me to decide it, as I think that the rule should be made absolute on the ground of insufficient direction.

Mr. ATTORNEY-GENERAL. My lord, the court being equally divided in opinion, if it is your lordship's desire that a judgment should be given, I believe that it is necessary that some arrangement should be made for that purpose, that by the consent of one of the judges who has delivered an opinion the rule should be either discharged or made absolute, otherwise we should have no judgment at all which could be taken anywhere else.

LORD CHIEF BARON. The officer of the court—the Queen's remembrancer—says that, according to practice, you would have an appeal either way; but it would, perhaps, be better it there were an apparent judgment of the court, deciding one way or the other, in order to remove every possible doubt.

Mr. BARON PIGOTT. Then I will withdraw my judgment.

Mr. BARON CHANNELL. According to the rules which the court
[78] made on the opening of this *argument, in order to assimilate this case to any ordinary civil action, when a rule for a new trial drops on the ground that the court is equally divided, there is a right of appeal.

LORD CHIEF BARON. My brother Pigott withdraws his judgment.

Mr. BARON PIGOTT. Yes.

LORD CHIEF BARON. Then the rule will be discharged.

Mr. ATTORNEY-GENERAL. That is quite enough, my lord.

JUDGMENTS OF SUPREME COURT OF THE UNITED STATES.

[*Printed from reports of decisions in the Supreme Court by B. R. Curtis, one of the associate justices of the court.*]

MOODIE *vs.* THE SHIP ALFRED.

3 D., 307.

It is not a violation of the neutrality laws of the United States to sell to a foreigner a vessel built in this country, though suited to be a privateer, and having some equipments calculated for war, but frequently used by merchant-ships.

The allegation in this case, as supported by the evidence, was that the privateer which took the British prize in question had been built in New York, with the express view of being employed as a privateer, in case the then existing controversy between Great Britain and the United States should terminate in war; that some of her equipments were calculated for war, though they were also frequently used by merchant-ships; that the privateer was sent to Charleston, where she was sold to a French citizen; that she was carried by him to a French island, where she was completely armed and equipped, and furnished with a commission; and that she afterward sailed on a cruise, during which the prize was taken and sent into Charleston.

Reed, for the plaintiff in error, contended that this was an original construction or outfit of a vessel for the purpose of war; and that if it was tolerated as legal, it would be easy by collusion to subvert the neutrality of the United States, and involve the country in a war.

The court, however, without hearing the opposite counsel, directed the decree to be affirmed.

THE DIVINA PASTORA. THE SPANISH CONSUL, CLAIMANT.

4 W., 52.

The Government of the United States having recognized the existence of a civil war between Spain and her colonies, our courts are bound to recognize as lawful those acts which war authorizes, and the new governments in South America may direct. Captures made under their commissions must be treated by us like other captures.

Their legality cannot be determined in our courts, unless made in violation of our neutrality.

The pleadings in the admiralty must contain at least some general allegation of the necessary facts, to enable the court to proceed.

Appeal from the circuit court of the United States for the district of Massachusetts.

The consul of His Catholic Majesty, at Boston, filed his libel in the district court, alleging that there had lately arrived at New Bedford a Spanish vessel called the Esperanza, otherwise the Divina Pastora, hav-

ing on board seven persons, all of whom are believed to be American citizens, who allege that the said vessel was captured by a privateer sailing under the flag of La Plata; that the libellant believes the capture was contrary to the law of nations, and in violation of the rights of her Spanish owner, to whom she ought to be restored. And it prays for process to arrest the vessel and cargo, and for inquiry to whom the property belongs. Antonio Utley, describing himself as a citizen of the free and independent United Provinces of Rio de la Plata, filed his plea, alleging that the vessel and cargo were captured by a vessel duly commissioned by the said United Provinces, and that he was put on board as prize-master, and he denies the jurisdiction of the court.

[80] The replication of the *consul denies that the capture gave any rights, for various reasons which it details, but alleges no facts respecting any breach of the neutrality of the United States.

It does not appear by the libel or replication whether it was intended to propound a case of mere marine trespass, or to contest the validity of a capture made under a commission such as is pleaded.

The district court pronounced a sentence of restitution, which was affirmed, *pro forma*, in the circuit court.

Winder, for the appellants.

Webster and *D. B. Ogden*, *contra*.

MARSHALL, C. J., delivered the opinion of the court:

The decision at the last term, in the case of the United States *vs.* Palmer, 3 Wheat., 610, establishes the principle that the Government of the United States, having recognized the existence of a civil war between Spain and her colonies, but remaining neutral, the courts of the Union are bound to consider as lawful those acts which war authorizes, and which the new governments in South America may direct against their enemy. Unless the neutral rights of the United States, as ascertained by the law of nations, the acts of Congress, and treaties with foreign powers, are violated by the cruisers sailing under commissions from those governments, captures by them are to be regarded by us as other captures, *jure belli*, are regarded; the legality of which cannot be determined in the courts of a neutral country. If, therefore, it appeared in this case that the capture was made under a regular commission from the government established at Buenos Ayres, by a vessel which had not committed any violation of our neutrality, the captured property must be restored to the possession of the captors. But if, on the other hand, it was shown that the capture was made in violation of our neutral rights and duties, restitution would be decreed to the original owners. But the pleadings in this case are too informal and defective to pronounce a final decree upon the merits. The proceedings in the admiralty must always contain at least a general allegation of such a nature as will apply to the case, as of prize, &c. The court has always endeavored to keep these proceedings within some kind of rule, though not requiring the same technical strictness as at common law. Here the pleadings present a case which may be consistent with the demand of the former owners for restitution, but which is tied up to such a state of facts as, if proved, will not authorize it, and will not admit the introduction of evidence varying from the facts alleged. The decree of the circuit court must, therefore, be reversed, and the cause remanded to that court, with directions to permit the pleadings to be amended, and for further proceedings.

Cause remanded.

The Estrella. Hernandez, Claimant.

4 W., 298.

The seal to the commission of a new government, not acknowledged by the Government of the United States, cannot be permitted to prove itself; but the fact that the vessel cruising under such commission is employed by such government may be established by other evidence, without proving the seal.

Where the privateer, cruising under such a commission, was lost subsequent to the capture in question, the previous existence of the commission on board was allowed to be proved by parol evidence.

Where restitution of captured property is claimed, upon the ground that the force of the cruiser making the capture has been augmented within the United States by enlisting men, the burden of proving such enlistment is thrown upon the claimant; the fact being proved by him, it is incumbent upon the captors to show that the persons so enlisted were subjects or citizens of the prince or state under whose flag the cruiser sails transiently within the United States, in order to bring the case, within the proviso of the second section of the act of June 5, 1794, (1 Stats. at Large (383,) and of the act of the 20th April, 1818, (3 Stats. at Large, 447.)

The right of adjudicating on all questions of prize exclusively belongs to the courts of the captor's country; but it is an exception to the general rule, that where the captured vessel is brought, or voluntarily comes, *infra præsidia* of a neutral power, that power has a right to inquire whether its own neutrality has been violated by the capture; and, if so, it is bound to restore the property.

The act of the 5th of June, 1794, is not expressly repealed by the act of the 3d of March, 1817, (3 Stats. at Large, 370.) The act of 1794, so far as it was not changed by the act of 1817, remained in force until the act of the 20th of April, 1818, by which all the provisions respecting our neutral relations were embraced, and all former laws on the same subject were repealed.

In the absence of any act of Congress on the subject, the courts of the United States would have authority under the general law of nations to decree restitution of property captured in violation of their neutrality.

Appeal from the district court of Louisiana.

This vessel and her cargo were libeled in the district court for the Louisiana district, by the alleged former Spanish owner. The libel stated that he was owner of the schooner and cargo which sailed from Havana, for the coast of Africa, on the 23d of April, 1817; that, on the next day, she was lawlessly and piratically captured, on the high seas, and held as prize, by an armed schooner called the Constitution of Venezuela, and forcibly brought within the jurisdiction of the United States, when she was recaptured by the United States ketch, the Surprise, and conducted to New Orleans. That the captors had no lawful commission from any sovereign state to commit hostilities at sea; but that the said schooner and cargo, until their recapture, were forcibly withheld from the libellant, in open violation and contempt of the law of nations. That if they had such commission, the same was issued or delivered within the waters and jurisdiction of the United
[81] States, with intent *that the said vessel, the Constitution, should be employed in the service of Venezuela, to commit hostilities at sea against the subjects of the King of Spain, with whom the United States then were and now are at peace, in violation of their laws and of the laws of nations. The libel further stated that the Constitution had, previously to her cruising, been fitted out, and armed, or increased or augmented in force, within the jurisdiction and waters of the United States; and, also, that she had been manned by sundry citizens or residents of the United States, with the intent that she should be employed to commit hostilities, as aforesaid, in violation of the laws aforesaid. For these causes the libelant prayed a restitution to him of the Estrella and cargo.

A claim was interposed by J. F. Lamoureux, prize-master of the Estrella, which stated that the Constitution was duly commissioned by the

republic of Venezuela, and authorized to capture all vessels belonging to its enemies, under which authority she had captured the Estrella, which, with her cargo, belonged to the enemies of the said republic. That before he could receive his prize-commission the Constitution upset in a gale, and her commission and papers, with the greater part of the crew, were lost.

The claimant further represented that as he was carrying the Estrella into port to have her condemned before the court of competent jurisdiction, she was captured by the United States ketch Surprise, and conducted to New Orleans; and, therefore, claimed that the Estrella and cargo might be adjudged to be restored to him.

It appears, from the transcript of the proceedings in this case, that the Estrella was also libeled on the part of the United States, although it is not stated for what cause such libel was filed, but the same was dismissed, from which decree there was no appeal.

It appeared in evidence that the Constitution had a commission from the government of Venezuela at the time the capture was made, which was issued and delivered at Carthagena, but that the same was lost by the sinking of the privateer immediately after the capture. There was some contradictory testimony as to her having increased her armament in the United States, and it was proved that she had augmented the number of her crew in the port of New Orleans.

On the libel filed by the Spanish owner, decree was made that the claim of Lamoureux, the prize-master, be dismissed, with costs, and that the Estrella and cargo be delivered up and restored to the libelant, from which sentence the cause was brought, by appeal, to this court.

C. J. Ingersoll, for the appellant and captor.
Sergeant, contra.

LIVINGSTON, J., delivered the opinion of the court:

The first allegation of the Spanish owner is, that the Constitution had no lawful commission from any sovereign state to commit hostilities at sea; and he contends that the commission in the present case, if any there was, being that of a government not acknowledged by the United States, ought to have been produced, and its seal proved; or that if the vessel carrying it had been lost, yet an exemplification of it ought to have been obtained from the proper department of the state which issued it. The court is satisfied with the proof which has been made of the Constitution having had a commission at the time of making the capture, and that such commission was granted by the government of Venezuela; and, also, that the same was lost with the privateer herself a very short time after the prize-crew took possession of the Estrella. The fact of the sinking of the Constitution is not disputed; and that she had, at the time she went down, a commission on board, is also fully made out, which commission there is no reason to believe was any other than the one which the collector of New Orleans says was on board when she arrived in that port from Carthagena. This was some time in the month of October, in the year 1816; Mr. Chew then saw the commission, and describes it as a very regular one, from the Venezuelan Republic, signed, as others were, by Bolivar. Although the court, in another case, has said that the seal of a government unacknowledged cannot be permitted to prove itself, it has, in the same case, said that the fact of a vessel being so employed may be established without proving the seal. (The United States *vs.* Palmer, 3 W., 635.) But if the Constitution had a commission on board, it is next alleged that the same was issued or delivered within the waters of the United States,

with intent that she should be employed in the service of Venezuela, to commit hostilities at sea against the subjects of the King of Spain, with whom the United States were at peace. This allegation is not supported by any evidence; on the contrary, the same witnesses who declare that the Constitution was a commissioned vessel, and whose testimony has already been adverted to, establish, beyond controversy, that the same was obtained abroad, and not issued or delivered within the United States.

The libel next alleges that the Constitution, previous to her last cruise, had been fitted out and armed, or that her force had been increased or augmented, within the jurisdiction and waters of the United States, and also that she had there been manned by sundry citizens or residents of the United States with the same intent.

Whatever doubt there may be as to the augmentation of the armament of the Constitution within the United States, the court is satisfied that a very considerable addition was made to her crew at New Orleans, after her arrival at that port; one of the custom-house officers declares that at that time she had only from twenty to twenty-five men. Another of these officers, who went on board on her first arrival, states the number of her crew at about twenty; and a witness by the name of Guzman, totally unconnected with this transaction, mentions by name two persons who entered on board while she was lying there. Several of the original crew of the Estrella have also been examined to this point, who state that after the capture they had many conversations with the officers and seamen who composed the prize-crew, by whom they were informed that the Constitution, when she left Carthagena, had but few hands on board; that at New Orleans she shipped almost the whole of her crew, which, at the time of the Estrella's capture, amounted to sixty or seventy men. This species of testimony has been objected to as being hearsay, and proceeding from a source entitled to no great credit; although there may be something in this objection, it is no reason for rejecting the evidence *altogether. If the testimony be hearsay, it must be recollected that the declarations proceeded from persons very much interested in giving a different representation of the transaction; and as to the witnesses themselves, although they formed a part of the Estrella's crew, and may have felt some little interest in the question, they were the only persons who could give any account of the armament or crew of the Constitution at the time of her making the capture. It may be also remarked that the testimony of these men is, in this respect, corroborated by that of other witnesses who are liable to no objection, and that their declarations, if untrue, might have been disproved by the claimant by showing where and when the crew of the Constitution had been entered. But if any of the crew of the Constitution were enlisted or entered within the jurisdiction of the United States, they may, it is said, have been citizens or subjects of the republic of Venezuela, who were transiently in the United States at the time of her arrival, and had, therefore, a right, within one of the provisos of the second section of the act of Congress of the 5th of June, 1794, c. 226, to enlist or enter themselves on board of her; and it is insisted that the libelant should have shown that they were not persons of this description. The court is not of this opinion. On the libelant, in the first instance, lay the *onus* of showing that the crew of the Constitution had been increased within the United States; having done this, it became incumbent on the captors, if they wanted to establish their innocence, to show, as was in their power if the fact was so, that

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they had done nothing contrary to law, by bringing their case within the proviso that has been mentioned.

The allegation, then, in the libel being made out that the Constitution, being a privateer commissioned by the republic of Venezuela, was manned within the United States previous to the cruise on which she captured the Estrella, by sundry citizens or residents of the United States, it remains to see whether the libelant has not made out a case of restitution.

It has been attempted, but without success, to distinguish this case in principle from several which have already been decided in this court. We have been told, as heretofore, that to the courts of the nation to which the captor belongs, and from which his commission issues, exclusively appertains the right of adjudicating on all captures and questions of prize. This is not denied; nor has the court ever felt any disposition to intrench on this rule; but, on the contrary, whenever an occasion has occurred, as in the case of the Invincible, 1 W., 238, it has been governed by it. Not only is it a rule well established by the customary and conventional law of nations, but it is founded in good sense, and is the only one which is salutary and safe in practice. It secures to a belligerent the independence to which every sovereign state is entitled, and which would be somewhat abridged were he to condescend so far as to permit those who bear his commission to appear before the tribunal of any other country, and to submit to their interpretation or control the orders and instructions under which they have acted. It insures, also, not only to the belligerent himself, but to the world at large, a great degree of caution and responsibility on the part of the agents whom he appoints, who not only give security to him for their good behavior, but will sometimes be checked in a lawless career by the consideration that their conduct is to be investigated by the courts of their own nation, and under the very eye of the sovereign under whose sanction they are committing hostilities. In this way, also, is a foundation laid for a claim by other nations, of an indemnity against the belligerent, for the injuries which their subjects may sustain by the operation of any unjust or improper rules which he may think proper to prescribe for those who act under his authority. But general and firmly established as this rule is, it is not more so than some of the exceptions which have grown out of it. A neutral nation which knows its duty will not interfere between belligerents so as to obstruct them in the exercise of their undoubted right to judge, through the medium of their own courts, of the validity of every capture made under their respective commissions, and to decide on every question of prize law which may arise in the progress of such discussion. But it is no departure from this obligation if, in a case in which a captured vessel be brought, or voluntarily comes, *infrà præsidia*, the neutral nation extends its examination so far as to ascertain whether a trespass has been committed on its own neutrality by the vessel which has made the capture. So long as a nation does not interfere in the war, but professes an exact impartiality toward both parties, it is its duty, as well as right, and its safety, good faith, and honor demand of it, to be vigilant in preventing its neutrality from being abused, for the purposes of hostility against either of them. This may be done not only by guarding, in the first instance, as far as it can, against all warlike preparations and equipments in its own waters, but also by restoring to the original owner such property as has been wrested from him by vessels which have been thus illegally fitted out. In the performance of this duty all the belligerents must be supposed to have an equal interest, and a disregard or a neglect of it would inevitably expose

a neutral nation to the charge of insincerity, and to the just dissatisfaction and complaints of the belligerent, the property of whose subjects should not, under such circumstances, be restored.

The United States, instead of opening their ports to all the contending parties, when at peace themselves—as may be done, if not prevented by antecedent treaties—have always thought it the wisest and safest course to interdict them all from fitting out or furnishing vessels of war within their limits, and to punish those who may contribute to such equipments. To enforce a general and strict observance of this neutrality on the part of our own citizens, and of others who reside among us, a law passed as early as the year 1794, making it penal, among other things, for any one within the jurisdiction of the United States to enlist in the service of any foreign prince or state as a soldier, marine, or seaman, on board of any vessel of war, letter of marque, or privateer. This law, it is supposed, was not in force at the time when the crew of the Constitution was increased at New Orleans, having been repealed, as is alleged, by the act of the 3d March, 1817, c. 58. But this act contains no repealing clause of this or any other section of the former law; and having made no provision on the subject of enlistment, it must have been the intention of the legislature to leave in full force all those parts of the first law which had undergone no alteration in the one which was then passing; and we therefore find no repeal of the act in question until the 20th of April, 1818, when all the provisions respecting our neutral relations were embraced by one act, and all former laws on the same subject were repealed. But whether the act of 1794, c. 226, were in force or not, would make no difference, *for
[83] it did not in terms contain, nor did any of the others which have, from time to time, been passed, contain a provision for the restitution of property captured on the ocean by vessels which might be thus illegally fitted out, or manned in our ports. It is true they recognize a right in the courts of the United States to make restitution when these laws have been disregarded, and impart to the courts a power to punish those who are concerned in such violations. But in the absence of every act of Congress in relation to this matter, the court would feel no difficulty in pronouncing the conduct here complained of an abuse of the neutrality of the United States; and although, in such case, the offender could not be punished, the former owner would, nevertheless, be entitled to restitution. Nor is our opinion confined to the single act of an illegal enlistment of men, which is the only fact proved in this case; for we have no hesitation in saying, that for any of the other violations of our neutrality alleged in the libel, if they had been proved, the Spanish owner would have been equally entitled to restitution.

Sentence affirmed, with costs.

La Amistad de Rues. Almiral, libelant.

5 W., 385.

In cases of marine torts, the probable profits of a voyage are not a fit rule for the ascertainment of damages.

In cases of violation of our neutrality by any of the belligerents, if the prize comes voluntarily within our territory it is restored to the original owners by our courts; but their jurisdiction for this purpose, under the law of nations, extends only to restitution of the specific property, with costs and expenses during the pen-

dency of the suit, and does not extend to the infliction of vindictive damages or compensation for plunderage, as in ordinary cases of marine torts.

Where the original owner seeks for restitution in our courts, upon the ground of a violation of our neutrality by the captors, the *onus probandi* rests upon him; and if there be reasonable doubt respecting the facts, the court will decline to exercise its jurisdiction.

Appeal from the district court of the United States for Louisiana.

This was the case of a Spanish ship captured by the Venezuelan privateer La Guerriere, on the high seas, in November, 1817, and afterward forcibly taken possession of near the mouth of the Mississippi by a detachment from the United States ketch Surprise, and brought into the port of New Orleans. A libel was there filed in the district court, in behalf of the original Spanish owners, claiming restitution of the property upon the ground (among other things) that the privateer had augmented her crew in the United States during the cruise and before the capture. A claim was given in by the original captors, denying the allegations in the libel, and praying restitution of the property as lawfully captured. At the hearing in the district court the cause turned almost entirely upon the question of the augmentation of the crew, and the court decreed restitution of the property to the original Spanish owners, with damages, which were ordered to be ascertained by assessors. The assessors reported damages as follows:

To the owners of the ship for loss by plunder	$625
To the owners of the cargo, for loss of market by the capture	4,000
Loss by plunder	575
In the whole	5,200

The report was confirmed by the court, and damages decreed accordingly. From this decree the captors appealed to this court.

C. J. Ingersoll, for the appellants.

The *Attorney-General*, contra.

STORY, J., delivered the opinion of the court, and, after stating the facts, proceeded as follows:

We pass over the question whether, supposing there was an illegal augmentation of the crew of the privateer in our ports, the American captors had any right forcibly to bring in the prize for adjudication. It is an important question, and when it shall be necessary to decide it, it will deserve serious consideration. The present cause may well be disposed of without any discussion concerning it.

Two questions have been made at the bar.

1. Whether, in point of fact, the illegal augmentation of the crew is so established as to entitle the Spanish libelants to restitution.

2. If so, whether the damages were rightfully awarded.

The last question will be first considered. And as to the item of damages for loss of market, we are all of opinion that it is clearly inadmissible. In cases of marine torts, this court have deliberately settled that the probable profits of a voyage are not a fit mode for the ascertainment of damages; the Amiable Nancy, 3 W., 546. It is considered that the rule is too uncertain in its own nature, and too limited in its applicability, to entitle it to judicial sanction. The same principle must govern in the present case.

But a more general objection is to the allowance of any damages in cases of this sort, as between the belligerents. The doctrine heretofore asserted in this court is, that whenever a capture is made by any belligerent in violation of our neutrality, if the prize come voluntarily

within our jurisdiction, it shall be restored to the original owners.
[84] This is done upon the footing of the general law of nations, *and the doctrine is fully recognized by the act of Congress of 1794. But this court have never yet been understood to carry their jurisdiction, in cases of violation of neutrality, beyond the authority to decree restitution of the specific property, with the costs and expenses during the pending of the judicial proceedings. We are now called upon to give general damages for plunderage, and if the particular circumstances of any case shall hereafter require it, we may be called upon to inflict exemplary damages to the same extent as in the ordinary cases of marine torts. We entirely disclaim any right to inflict such damages, and consider it no part of the duty of a neutral nation to interpose, upon the mere footing of the law of nations, to settle all the rights and wrongs which may grow out of a capture between belligerents. Strictly speaking, there can be no such thing as a marine tort between the belligerents. Each has an undoubted right to exercise all the rights of war against the other; and it cannot be a matter of judicial complaint that they are exercised with severity, even if the parties do transcend those rules which the customary laws of war justify. At least they have never been held within the cognizance of the prize tribunals of neutral nations. The captors are amenable to their own government exclusively for any excess or irregularity in their proceedings, and a neutral nation ought not otherwise to interfere than to prevent captors from obtaining any unjust advantage by a violation of its neutral jurisdiction. Neutral nations may, indeed, inflict pecuniary or other penalties on the parties for any such violation, but it then does it professedly in vindication of its own rights, and not by way of compensation to the captured. When called upon by either of the belligerents to act in such cases, all that justice seems to require is, that the neutral nation should fairly execute its own laws, and give no asylum to the property unjustly captured. It is bound, therefore, to restore the property if found within its own ports, but beyond this it is not obliged to interpose between the belligerents. If, indeed, it were otherwise, there would be no end to the difficulties and embarrassments of neutral prize tribunals. They would be compelled to decide, in every variety of shape, upon marine trespasses *in rem*, and *in personam*, between belligerents, without possessing adequate means of ascertaining the real facts, or of compelling the attendance of foreign witnesses, and thus they would draw within their jurisdiction almost every incident of prize. Such a course of things would necessarily create irritations and animosities, and very soon embark neutral nations in all the controversies and hostilities of the conflicting parties. Considerations of public policy come, therefore, in aid of what we consider the law of nations on this subject, and we may add that Congress in its legislation has never passed the limit which is here marked out. Until Congress shall choose to prescribe a different rule, this court will, in cases of this nature, confine itself to the exercise of the simple authority to decree restitution, and decline all inquiries into questions of damages for asserted wrongs. The decree for damages is, therefore, unhesitatingly reversed.

The other question presents more difficulty. It must be admitted that there is positive testimony directly to the point of the illegal augmentation of the privateer; and if it stood uncontradicted, and were liable to no deduction, the libelant would certainly be entitled to restitution. But the testimony as to the augmentation comes chiefly from very obscure persons, and is, in itself, in many respects, loose and equivocal,

and that of one, at least, of the principal witnesses is, in a most material fact, directly contradicted by a written document, whose verity has not been questioned. It is proved, by the report of an inspector made to the custom-house, that, at the arrival of the privateer in port, she had on board forty-nine men; yet the witness alluded expressly alleges that, at the time of her arrival at New Orleans, she had not more than ten or twelve persons on board. It appears, too, that the crew of the privateer was wholly composed of foreigners, principally persons from the Spanish Main and from Saint Domingo. Being arrived at New Orleans in the course of a cruise, which is not proved to have ended there, the natural presumption is that her original crew continued attached to her; and this presumption is considerably fortified by the fact that, though the officers of the custom-house of that port vigilantly inquire into cases of this nature, there is nothing in their testimony that in the slightest degree affects the conduct of the privateer in an unfavorable manner. It certainly cannot be said that the evidence is free from all reasonable doubt. And, in cases of this nature, where the libelant seeks the aid of a neutral court to interpose itself against a belligerent capture on account of a supposed violation of neutrality, we think the burden of proof rests upon him. To justify a restitution to the original owners, the violation of neutrality should be clearly made out. If it remains doubtful, the court ought to decline the exercise of its jurisdiction, and leave the property where it finds it. We cannot say that the present case is clear from reasonable doubt, and therefore we reverse the decree of the district court, and order restitution to be made to the original captors; but, under all the circumstances, the parties are to bear their own costs.

Decree reversed, and libel dismissed, without costs.

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[85] * THE SANTISSIMA TRINIDAD AND THE ST. ANDER.

7 W., 283.

The Santissima Trinidad and the St. Ander.

The commission of a public vessel, signed by the proper authorities of the nation to which it belongs, is complete proof of national character; it imports absolute verity, and the title to the vessel, or mode in which it was acquired, is not examinable by a foreign court.

Though the independence of Buenos Ayres has not been acknowledged by the United States, we have recognized the existence of a state of civil war between Spain and its colonies, and each party to that war is respected by us in the exercise of all belligerent rights, including the right of capture.

An immaterial contradiction of his testimony may leave a witness credible; yet if he is shown to have willfully departed from the truth, the maxim, *falsus in uno falsus in omnibus*, must be applied.

Though a vessel armed and equipped for war, and sent to a belligerent port for sale, is liable to capture by the other belligerent party, it is a commercial adventure not prohibited by our laws, or the laws of nations.

An augmentation of the force of a foreign belligerent vessel in a port of the United States, we being neutral, by a substantial increase of her crew, is a breach of our neutrality.

The VIth and XIVth articles of our treaty with Spain, of the 27th of October, 1795, (8 Stats. at Large, 142, 144,) prohibit a citizen of the United States from taking a commission to cruise against Spanish vessels and property in a privateer, but not in a public armed vessel of a belligerent nation.

A capture made by a belligerent, whose force has been augmented in violation of our neutrality laws, during the cruise immediately succeeding such violation, presents a case for restitution by our courts.

The cases of the Cassius, 3 D., 121, and the Invincible, 1 W., 238, decide that neither a public vessel of another nation, nor its officers, are liable to answer in our courts for a capture on the high seas; but do not touch the jurisdiction over her prizes lying in

our ports, which extends to libels *in rem* for restitution of such prizes made in violation of our neutrality, either by a public or private armed vessel.

A foreign public vessel is exempted from the jurisdiction of our courts, by an exception grounded on common usage and public policy; but this exception does not extend to her prizes or captured goods landed here, which are liable to the jurisdiction of our courts for the purpose of inquiry and restitution, if a case for it is made.

Condemnation by a belligerent's court of prize may pass while the property is lying in a neutral port, if in the possession of the captors there; yet if the property has been arrested by process issuing out of a court of admiralty of the neutral country where the property is, and the possession of the captors has been thus divested, a subsequent condemnation is not valid.

Appeal from the circuit court of the United States for the district of Virginia.

This was a libel filed by the consul of Spain, in the district court of Virginia, in April, 1817, against eighty-nine bales of cochineal, two bales of jalap, and one box of vanilla, originally constituting part of the cargoes of the Spanish ships Santissima Trinidad and St. Ander, and alleged to be unlawfully and piratically taken out of those vessels called the Independencia del Sud and the Altravida, and manned and commanded by persons assuming themselves to be citizens of the United Provinces of Rio de la Plata. The libel was filed, in behalf of the original Spanish owners, by Don Pablo Chacon, consul of His Catholic Majesty for the port of Norfolk.

A claim and answer was given in by James Chaytor, styling himself Don Diego Chaytor, in which he asserted that he was commander of the Independencia; that she was a public armed vessel belonging to the government of the United Provinces of Rio de la Plata, and that he was duly commissioned as her commander; that open war existed between those provinces and Spain; that the property in question was captured by him as prize of war, on the high seas, and taken out of the Spanish ships, the Santissima Trinidad and the St. Ander, and put on board of the Independencia; and that he afterward, in March, 1817, came into the port of Norfolk with his capturing ship, where she was received and acknowledged as a public ship of war, and the captured property, with the approbation and consent of the Government of the United States, was there landed for safe-keeping in the custom-house store. The claimant admitted that he was a native citizen of the United States, and that his wife and family have constantly resided at Baltimore; but alleged that in May, 1816, at the city of Buenos Ayres, he accepted a commission under the government of the United Provinces, and then and there expatriated himself by the only means in his power, namely, a formal notification of the fact to the United States consul at that place. He denied that the capturing vessel, the Independencia, was owned in the United States, or that she was fitted out, equipped, or armed, or her force augmented, in the ports of the United States, contrary to law. He denied, also, that the Altravida was owned in the United States, or that she was armed, equipped, or fitted out in the United States, contrary to law; or that she aided in the capture of the property in question. He further asserted that the captured property had been libeled and duly condemned as prize in the tribunal of prizes of the United Provinces, at Buenos Ayres, on the 6th of February, 1818. He denied the illegal enlistment of his crew in the United States, but admitted that several persons there entered themselves on board as seamen in December, 1816, representing themselves to be, and being, as he supposed, citizens of the United Provinces, or in their service, and then transiently in the United States; and that he refused to receive citizens of this country, and actually sent on shore some who had clandestinely introduced themselves on board.

The district court, upon hearing of the cause, decreed restitution to the original Spanish owners. That sentence was affirmed in the circuit court, and from the decree of the latter the cause was brought by appeal to this court.

The evidence on which the court proceeded is sufficiently indicated in the opinion.

Winder and *Ogden*, for the appellant.
Webster and *Tazwell*, contra.

STORY, J., delivered the opinion of the court:

Upon the argument at the bar several questions have arisen, which have been deliberately considered by the court, and its judgment
[86] will now be pronounced. The first in the order in which *we think it most convenient to consider the cause, is, whether the Independencia is, in point of fact, a public ship, belonging to the government of Buenos Ayres. The history of this vessel, so far as is necessary for the disposal of this point, is briefly this: She was originally built and equipped at Baltimore, as a privateer, during the late war with Great Britain, and was then rigged as a schooner, and called the Mammoth, and cruised against the enemy. After the peace she was rigged as a brig and sold by her original owners. In January, 1816, she was loaded with a cargo of munitions of war, by her new owners, (who are inhabitants of Baltimore,) and being armed with twelve guns, constituting a part of her original armament, she was dispatched from that port, under the command of the claimant, on a voyage, ostensibly to the northwest coast, but in reality to Buenos Ayres. By the written instructions given to the supercargo on this voyage, he was authorized to sell the vessel to the government of Buenos Ayres, if he could obtain a suitable price. She duly arrived at Buenos Ayres, having exercised no act of hostility, but sailed under the protection of the American flag during the voyage. At Buenos Ayres, the vessel was sold to Captain Chaytor and two other persons, and soon afterward she assumed the flag and character of a public ship, and was understood by the crew to have been sold to the government of Buenos Ayres; and Captain Chaytor made known these facts to the crew, and asserted that he had become a citizen of Buenos Ayres, and had received a commission to command the vessel as a national ship, and invited the crew to enlist in the service, and the greater part of them accordingly enlisted. From this period, which was in May, 1816, the public functionaries of our own and other foreign governments at that port considered the vessel as a public ship of war, and such was her avowed character and reputation. No bill of sale of the vessel to the government of Buenos Ayres is produced, and a question has been made, principally from this defect in the evidence, whether her character as a public ship is established. It is not understood that any doubt is expressed as to the genuineness of Captain Chaytor's commission, nor as to the competency of the other proofs in the cause introduced to corroborate it. The only point is, whether, supposing them true, they afford satisfactory evidence of her public character. We are of opinion that they do. In general, the commission of a public ship, signed by the proper authorities of the nation to which she belongs, is complete proof of her national character. A bill of sale is not necessary to be produced. Nor will the courts of a foreign country inquire into the means by which the title to the property has been acquired. It would be to exert the right of examining into the validity of the acts of the foreign sovereign, and to sit in judgment upon them in cases where he has not conceded the jurisdiction,

and where it would be inconsistent with his own supremacy. The commission, therefore, of a public ship, when duly authenticated, so far at least as foreign courts are concerned, imports absolute verity, and the title is not examinable. The property must be taken to be duly acquired, and cannot be controverted. This has been the settled practice between nations, and it is a rule founded in public convenience and policy, and cannot be broken in upon without endangering the peace and repose as well of neutral as of belligerent sovereigns. The commission in the present case is not expressed in the most unequivocal terms, but its fair purport and interpretation must be deemed to apply to a public ship of the government. If we add to this corroborative testimony of our own and the British consul at Buenos Ayres, as well as that of private citizens, to the notoriety of her claim of a public character, and her admission into our own ports as a public ship, with the immunities and privileges belonging to such a ship, with the express approbation of our own Government, it does not seem too much to assert, whatever may be the private suspicion of a lurking American interest, that she must be judicially held to be a public ship of the country whose commission she bears.

There is another objection urged against the admission of this vessel to the privileges and immunities of a public ship, which may as well be disposed of in connection with the question already considered. It is, that Buenos Ayres has not yet been acknowledged as a sovereign independent government by the Executive or legislature of the United States, and, therefore, it is not entitled to have her ships of war recognized by our courts as national ships. We have, in former cases, had occasion to express our opinion on this point. The Government of the United States has recognized the existence of a civil war between Spain and her colonies, and has avowed a determination to remain neutral between the parties, and to allow to each the same rights of asylum and hospitality and intercourse. Each party is, therefore, deemed by us a belligerent nation, having, so far as concerns us, the sovereign rights of war, and entitled to be respected in the exercise of those rights. We cannot interfere to the prejudice of either belligerent without making ourselves a party to the contests, and departing from the posture of neutrality. All captures made by each must be considered as having the same validity, and all the immunities which may be claimed by public ships in our ports, under the law of nations, must be considered as equally the right of each, and, as such, must be recognized by our courts of justice, until Congress shall prescribe a different rule. This is the doctrine heretofore asserted by this court, and we see no reason to depart from it.

The next question growing out of this record is, whether the property in controversy was captured in violation of our neutrality, so that restitution ought, by the law of nations, to be decreed to the libelants. Two grounds are relied upon to justify restitution: 1. That the Independencia and Altravida were originally equipped, armed, and manned as vessels of war in our ports. 2. That there was an illegal augmentation of the force of the Independencia within our ports. Are these grounds, or either of them, sustained by the evidence?

If the cause stood solely upon the testimony of the witnesses who have been examined on behalf of the libelants, we should have great hesitation in admitting the conclusions which have been drawn from it. The witnesses, indeed, speak directly and uniformly either to the point of illegal equipment, or illegal augmentation of force within our ports. But their testimony is much shaken by the manifest contradictions

which it involves, and by declarations of facts, the falsity of which was entirely within their knowledge, and has been completely established in proof. It has been said that if witnesses concur in proof of a material fact, they ought to be believed in respect to that fact, whatever may be the other contradictions in their testimony. That position may be true under circumstances, but it is a doctrine which can be received only under many qualifications, and with great caution. If the
[87] *circumstances respecting which the testimony is discordant be immaterial, and of such a nature that mistakes may easily exist, and be accounted for in a manner consistent with the utmost good faith and probability, there is much reason for indulging the belief that the discrepancies arise from the infirmity of the human mind rather than from deliberate error. But where the party speaks to a fact in respect to which he cannot be presumed liable to mistake, as in relation to the country of his birth, or his being in a vessel on a particular voyage, or living in a particular place, if the fact turn out otherwise, it is extremely difficult to exempt him from the charge of deliberate falsehood; and courts of justice, under such circumstances, are bound, upon principles of law, and morality, and justice, to apply the maxim, *Falsus in uno, falsus in omnibus.* What ground of judicial belief can there be left, when the party has shown such gross insensibility to the difference between right and wrong, between truth and falsehood? The contradictions in the testimony of the witnesses of the libelants have been exposed at the bar with great force and accuracy, and they are so numerous that in ordinary cases no court of justice could venture to rely on it without danger of being betrayed into the grossest errors. But in a case of the description of that before the court, where the sovereignty and rights of a foreign belligerent nation are in question, and where the exercise of jurisdiction over captures made under its flag can be justified only by clear proof of the violation of our neutrality, there are still stronger reasons for abstaining from interference, if the testimony is clouded with doubt and suspicion. We adhere to the rule which has been already adopted by this court, that restitution ought not to be decreed upon the ground of capture in violation of our neutrality, unless the fact be established beyond all reasonable doubt.

But the present case does not stand upon this testimony alone. It derives its principal proofs altogether from independent sources, to the consideration of which the attention of the court will now be directed.

The question as to the original illegal armament and outfit of the Independencia may be dismissed in a few words. It is apparent that, though equipped as a vessel of war, she was sent to Buenos Ayres on a commercial adventure, contraband, indeed, but in no shape violating our laws or our national neutrality. If captured by a Spanish ship of war during the voyage, she would have been justly condemnable as good prize, for being engaged in a traffic prohibited by the law of nations. But there is nothing in our laws, or in the law of nations, that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale. It is a commercial adventure which no nation is bound to prohibit; and which only exposes the persons engaged in it to the penalty of confiscation. Supposing, therefore, the voyage to have been for commercial purposes, and the sale at Buenos Ayres to have been a *bona-fide* sale, (and there is nothing in the evidence before us to contradict it,) there is no pretense to say that the original outfit on the voyage was illegal, or that a capture made after the sale was, for that cause alone, invalid.

The more material consideration is as to the augmentation of her

force in the United States at a subsequent period. It appears from the evidence, and, indeed, is admitted by Captain Chaytor, that after the sale in May, 1816, the Independencia sailed for Buenos Ayres under his command, on a cruise against Spain; and, after visiting the coast of Spain, she put into Baltimore early in the month of October of the same year, having then on board the greater part of her original crew, among whom were many Americans. On her arrival at Baltimore, she was received as a public ship, and there underwent considerable repairs. Her bottom was new coppered, some parts of her hull were re-calked, parts of the water-ways were replaced, a new head was put on, some new sails and rigging to a small amount, and a new mainyard was obtained, some bolts were driven into the hull, and the mainmast, which had been shivered by lightning, was taken out, reduced in length, and replaced in its former station. In order to make these repairs, her guns, ammuniton, and cargo were discharged under the inspection of an officer of the customs; and when the repairs were made the armament was replaced, and a report made by the proper officer to the collector that there was no addition to her armament. The Independencia left Baltimore in the latter part of December, 1816, having then on board a crew of 112 men, and about the 8th of January following she sailed from the capes of the Chesapeake on the cruise on which the property in question was captured, being accompanied by the Altravida as a tender, or dispatch vessel. It will be necessary hereafter to make more particular mention of the Altravida; but, for the present, the observations of the court will be confined to the Independencia. It is admitted by the claimant that, during her stay at Baltimore, several persons were enlisted on board the Independencia, and his own witnesses prove that the number was about thirty.

The first observation that occurs on this part of the case is, that here is a clear augmentation of force within our jurisdiction. The excuse offered is, that the persons so enlisted represented themselves, or were supposed to be, persons in the service of Buenos Ayres. Of this, however, there is not the slightest proof. The enlistment of men being proved, it is incumbent on the claimant to show that they were persons who might lawfully be enlisted; and as the burden of the proof rests on him, the presumption necessarily arising from the absence of such proof is that they were not of that character. It is not a little remarkable that not a single officer of the Independencia has been examined on this occasion. They are the persons who, from their situation, must have been acquainted with the facts; and the total omission to bring their testimony into the cause can scarcely be accounted for but upon a supposition extremely unfavorable to the innocence of the transaction.

Another observation which is drawn from the predicament of this case is, that if, as the claimant asserts, the original voyage to Buenos Ayres was a mere commercial adventure, the crew must have been composed principally of Americans, or residents in our country. They enlisted at Buenos Ayres on board the Independencia, as officers and seamen, for the purposes of warfare, and there is no evidence in the case as to the length of time of their engagements, or of the place where the cruise was to terminate. Why are the documents on this subject—for documents must exist in the possession of the claimant—why are they not produced? If the cruise was to terminate at Buenos Ayres, or at a specific period of time, the fact would have a material bearing
[88] on the merits of the cause. Yet *though the pressure of this
. point must, at all times, have been forcibly felt, there has not, up

to the present moment, been the slightest effort to relieve it from the darkness which thus surrounds it. Under such circumstances, the natural conclusion would seem to be that the crew were to be discharged, and the cruise to terminate at Baltimore. This was their native or adopted home, the place where they first embarked on board the Mammoth, and that to which most of them must be supposed solicitous to return. The conduct of the vessel indicated the same intent. She underwent general repairs, some of which could hardly be deemed of great necessity, and must have been induced by the consideration that Baltimore was a port peculiarly well fitted for naval equipments. During the repairs (a period of two months) the crew were necessarily on shore; and it is scarcely to be supposed that they were held together by any common bond of attachment, or that they had so far lost the common character of seamen as not to be easily led into some other employment or enterprise which would yield immediate profit. What proof, indeed, is there that the same crew who came to Baltimore sailed in the Independencia on her new cruise? It is stated only as hearsay by one or two of the claimants' witnesses, who had no means, and do not pretend to any means, of accurate knowledge of the fact. If true, it might have been proved by the officers of the ship, by the muster-roll of the crew, and by the shipping articles; and these are wholly withdrawn from the cause, without even an apology for their absence. It would certainly be an unreasonable credulity for the court, under such circumstances, to believe that the actual augmentation of force was not far greater than what is admitted by the party, and that there was either an innocence of intention or act in the enlistments. The court is therefore driven to the conclusion that there was an illegal augmentation of force of the Independencia in our ports, by a substantial increase of her crew; and this renders it wholly unnecessary to enter into an investigation of the question, whether there was not also an illegal increase in her armament.

If any doubt could be entertained as to the Independencia, none can be as to the predicament of the Altravida. This vessel was formerly a privateer called the Romp, and was condemned for illegal conduct by the district court of Virginia; and under the decree of the court was sold, together with the armament and munitions of war then on board. She was purchased ostensibly for a Mr. Thomas Taylor, but was immediately transferred to Mr. Chaytor. She soon afterward went to Baltimore, and was attached as a tender to the Independencia, having no separate commission, but acting under the authority of Captain Chaytor. Part of her armament and a crew of about twenty-five men were put on board at Baltimore. She dropped down to the Patuxent a few days before the sailing of the Independencia, and was there joined by the latter, and accompanied her on a cruise in the manner already mentioned. Here, then, is complete evidence from the testimony introduced by the claimant himself, of an illegal outfit of the Altravida, and an enlistment of her crew within our waters for the purposes of war. There is no pretense that the crew was transferred to her from the Independencia, for the claimants' own witnesses admit that a few only were of this description. The Altravida must be considered as attached to, and constituting a part of, the force of the Independencia, and so far as the warlike means of the latter were increased by the purchase, her military force must be deemed to be augmented. Not the slightest evidence is offered of the place or circumstances under which the enlistment of the crew took place. It consisted, according to the strong language of the testimony, of persons of all nations; and it deserves consideration, that

throughout this voluminous record, not a scintilla of evidence exists to show that any person on board of either vessel was a native of Buenos Ayres. We think, then, that the fact of illegal augmentation of force, by the equipment of the Altravida, is also completely established in proof.

What, then, are the consequences which the law attaches to such conduct, so far as they respect the property now under adjudication? It is argued on the part of the libelant that it presents a *casus fœderis* under our treaty with Spain. The sixth and fourteenth articles are relied upon for this purpose. The former is, in our judgment, exclusively applicable to the protection and defense of Spanish ships within our territorial jurisdiction, and provides for the restitution of them when they have been captured within that jurisdiction. The latter article provides that no subject of Spain "shall apply for or take any commission or letter of marque for arming any ship or ships to act as privateers" against the United States, or their citizens, or their property, from any prince or state with which the United States shall be at war; and that no citizen of the United States "shall apply for or take any commission or letters of marque for arming any ship or ships to act as privateers" against the King of Spain, or his subjects, or his property, from any prince or state with which the said King shall be at war. "And if any person of either nation shall take such commission or letter of marque, he shall be punished as a pirate." In the Spanish counterpart of the treaty, the word "privateers" in the first clause has the corresponding word "corsarios;" but in the second clause no such word is to be found. But it is obvious that both clauses were intended to receive, and ought to receive, the same construction; and the very terms of the article confine the prohibition to commissions, &c., to privateers. It is not for this court to make the construction of the treaty broader than the apparent intent and purport of the language. There may have existed, and probably did exist, reasons of public policy which forbade an extension of the prohibition to public ships of war. It might well be deemed a breach of good faith in a nation to enlist in its own service an acknowledged foreigner, and at the same time subject him by that very act, and its own stipulations, to the penalties of piracy. But it is sufficient for the court that the language of the treaty does include the case of a public ship, and we do not perceive that the apparent intention or spirit of any of its provisions justifies such an interpolation. The question, then, under the Spanish treaty, may be dismissed without further commentary.

This view of the question renders it unnecessary to consider another, which has been discussed at the bar, respecting what has been denominated the right of expatriation. It is admitted by Captain Chaytor, in the most explicit manner, that during this whole period his wife and family have continued to reside at Baltimore; and so far as this [89] fact goes, it contradicts the supposition of any real change *of his own domicile. Assuming, for the purpose of argument, that an American citizen may, independently of any legislative act to this effect, throw off his own allegiance to his native country, as to which we give no opinion, it is perfectly clear that this cannot be done without a *bona-fide* change of domicile under circumstances of good faith. It can never be asserted as a cover for fraud, or as a justification for the commission of a crime against the country, or for a violation of its laws, when this appears to be the intention of the act. It is unnecessary to go into a further examination of this doctrine; and it will be

sufficient to ascertain its precise nature and limits when it shall become the leading point of a judgment of the court.

And here we are met by an argument on behalf of the claimant, that the augmentation of the force of the Independencia, within our ports, is not an infraction of the law of nations or a violation of our neutrality; and that, so far as it stands prohibited by our municipal laws, the penalties are personal, and do not reach the case of restitution of captures made in the cruise, during which such augmentation has taken place. It has never been held by this court that an augmentation of force or illegal outfit affected any captures made after the original cruise was terminated. By analogy to other cases of violations of public law, the offense may well be deemed to be deposited at the termination of the voyage, and not to affect future transactions. But as to captures made during the same cruise, the doctrine of this court has long established that such illegal augmentation is a violation of the law of nations, as well as of our own municipal laws, and, as a violation of our neutrality, by analogy to other cases, it infects the captures subsequently made with the character of torts, and justifies and requires a restitution to the parties who have been injured by such misconduct. It does not lie in the mouth of wrong-doers to set up a title derived from a violation of our neutrality. The cases in which this doctrine has been recognized and applied have been cited at the bar, and are so numerous and so uniform that it would be a waste of time to discuss them, or to examine the reasoning by which they are supported. More especially as no inclination exists on the part of the court to question the soundness of these decisions. If, indeed, the question were entirely new, it would deserve very grave consideration, whether a claim founded on a violation of our neutral jurisdiction could be asserted by private persons, or in any other manner than by a direct intervention of the Government itself. In the case of a capture made within a neutral territorial jurisdiction, it is well settled that, as between the captors and the captured, the question can never be litigated. It can arise only upon a claim of the neutral sovereign asserted in his own courts or the courts of the power having cognizance of the capture itself for the purpose of prize. And by analogy to this course of proceeding, the interposition of our own Government might seem fit to have been required before cognizance of the wrong could be taken by our courts. But the practice from the beginning in this class of causes, a period of nearly thirty years, has been uniformly the other way; and it is now too late to disturb it. If any inconvenience should grow out of it, from reasons of State policy or executive discretion, it is competent for Congress to apply, at its pleasure, the proper remedy.

It is further contended by the claimant that the doctrine heretofore established has been confined to cases of captures made by privateers; and that it has never been applied to captures by public ships, and in reason and policy ought not to be so applied. The case of the Cassius, in 3 D., 121, has been supposed at the bar to authorize such an interpretation of the doctrine. That was the case of a motion for a prohibition to the district court to prohibit it from exercising jurisdiction on a libel filed against the Cassius, a public armed ship of France, to obtain compensation in damages *in rem*, for an asserted illegal capture of another vessel belonging to the libelants on the high seas, and sending her into a French port for adjudication as prize. The libel alleged that the Cassius was originally equipped and fitted for war in a port of the United States contrary to our laws and the law of nations. But there was no allegation that she had been originally fitted out by her present commander, or after she became the property of the French government

The principal question was, whether our courts could sustain a libel for compensation *in rem* against the capturing vessel for an asserted illegal capture as prize on the high seas, when the prize was not brought into our ports, but was carried into a port *infra præsidia* of the captors. The court granted the prohibition; but as no reasons were assigned for the judgment, the only ground that can be gathered is that which is apparent on the face of the writ of prohibition, where it is distinctly asserted that the jurisdiction in cases of this nature exclusively belongs to the courts of the capturing power, and that neither the public ships of a nation, nor the officers of such ships, are liable to be arrested to answer for such captures in any neutral court. The doctrine of that case was fully recognized by this court in the case of the Invincible, 1 W., 238; and it furnishes a rule for the exemption of a public ship from proceedings *in rem* in our courts for illegal captures on the high seas, in violation of our neutrality; but in no degree exempts her prizes in our ports from the ample exercise of our jurisdiction.

Nor is there any reason nor in policy any ground for a distinction between captures in violation of our neutrality by public ships and by privateers. In each case the injury done to our friend is the same; in each the illegality of the capture is the same; in each the duty of the neutral is equally strong to assert its own rights, and to preserve its own good faith, and to take from the wrong-doer the property he has unjustly acquired, and reinstate the other party in his title and possession, which have been tortiously divested. This very point was directly asserted by this court in its judgment in the causes of the Invincible. Mr. Justice Johnson there said: "As to the restitution of prizes made in violation of neutrality, there could be no reason suggested for making a distinction between the national and the private armed vessels of a belligerent. While a neutral yields to other nations the unobstructed exercise of their sovereign or belligerent rights, her own dignity and security require of her the vindication of her own neutrality, and of her sovereign right to remain the peaceable and impartial spectator of the war. As to her, it is immaterial in whom the property of the offending vessel is vested. The commission under which the captors act is the same, and that alone communicates the right of capture, even to a vessel which is national property." We are satisfied of the correctness of this doctrine, and have no disposition to shake it. In cases of violation of neutral
*territorial jurisdiction, no distinction has ever been made between
[90] the capture of public and private armed ships; and the same reason which governs that applies with equal force to this case.

An objection of a more important and comprehensive nature has been urged at the bar, and that is, that public ships of war are exempted from the local jurisdiction by the universal assent of nations; and that as all property captured by such ships is captured for the sovereign, it is, by parity of reasoning, entitled to the like exemption; for no sovereign is answerable for his acts to the tribunals of any foreign sovereign.

In the case of the Exchange, 7 C., 116, the grounds of the exemption of public ships were fully discussed and expounded. It was there shown that it was not founded upon any notion that a foreign sovereign had an absolute right, in virtue of his sovereignty, to an exemption of his property from the local jurisdiction of another sovereign when it came within his territory; for that would be to give him sovereign power beyond the limits of his own empire. But it stands upon principles of public comity and convenience, and arises from the presumed consent or license of nations, that foreign public ships coming into their ports, and demeaning themselves according to law and in a friendly manner, shall be ex-

empt from the local jurisdiction. But as such consent and license is implied only from the general usage of nations, it may be withdrawn upon notice at any time, without just offense, and if afterward such public ships come into our ports, they are amenable to our laws in the same manner as other vessels. To be sure, a foreign sovereign cannot be compelled to appear in our courts, or be made liable to their judgment so long as he remains in his own dominions, for the sovereignty of each is bounded by territorial limits. If, however, he comes personally within our limits, although he generally enjoy a personal immunity, he may become liable to judicial process in the same way, and under the same circumstances, as the public ships of the nation. But there is nothing in the law of nations which forbids a foreign sovereign, either on account of the dignity of his station or the nature of his prerogative, from voluntarily becoming a party to a suit in the tribunals of another country, or from asserting there any personal, or proprietary, or sovereign rights which may be properly recognized and enforced by such tribunals. It is a mere matter of his own good will and pleasure; and if he happens to hold a private domain within another territory, it may be that he cannot obtain full redress for any injury to it, except through the instrumentality of its courts of justice. It may therefore be justly laid down as a general proposition, that all persons and property within the territorial jurisdiction of a sovereign are amenable to the jurisdiction, to himself, or his courts; and that the exceptions to this rule are such only as by common usage and public policy have been allowed, in order to preserve the peace and harmony of nations, and to regulate their intercourse in a manner best suited to their dignity and rights. It would, indeed, be strange if a license implied by law from the general practice of nations, for the purposes of peace, should be construed as a license to do wrong to the nation itself, and justify the breach of all those obligations which good faith and friendship, by the same implication, impose upon those who seek an asylum in our ports. We are of opinion that the objection cannot be sustained; and that whatever may be the exemption of the public ship herself, and of her armament and munitions of war, the prize property which she brings into our ports is liable to the jurisdiction of our courts, for the purpose of examination and inquiry; and if a proper case be made out for restitution to those whose possession has been divested by a violation of our neutrality, and if the goods are landed from the public ship in our ports, by the express permission of our own Government, that does not vary the case, since it involves no pledge that, if illegally captured, they shall be exempted from the ordinary operations of our laws.

The last question that has been made at the bar, on which it is necessary to pronounce an opinion is, as to the effect of the asserted condemnation of the property in controversy at Buenos Ayres during the pendency of this suit. Assuming, for the purpose of argument, that the condemnation was regularly made, and is duly authenticated, we are of opinion that it cannot oust the jurisdiction of this court, after it had once regularly attached itself to the cause. By the seizure and the possession of the property under the process of the district court, the possession of the captors was divested, and the property was emphatically placed in the custody of the law. It has been since sold by consent of the parties, under an interlocutory decree of the court, and the proceeds are deposited in its registry to abide the final adjudication. Admitting, then, that property may be condemned in the courts of the captor, while lying in a neutral country, (a doctrine which has been affirmed by this court,) still it can be so adjudicated only while the possession of the

captor remains; for if it be divested in fact, or by operation of law, that possession is gone which can alone sustain the jurisdiction. *A fortiori*, where the property is already in the custody of a neutral tribunal, and the title is in litigation there, no other foreign court can, by its adjudication, rightfully take away its jurisdiction, or forestall and defeat its judgment. It would be an attempt to exercise a sovereign authority over the court having possession of the thing, and take from the nation the right of vindicating its own justice and neutrality.

Upon the whole, it is the opinion of the court that the decree of the circuit court be affirmed, with costs.

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[91] The Gran Para. The Consul-General of Portugal, Libelant.

7 W., 471. The Gran Para.

It is firmly settled that if captures are made by vessels which have violated our neutrality acts, the property may be restored, if brought within our territory.

A vessel armed and manned in one of our ports, and sailing thence to a belligerent port, with the intent thence to depart on a cruise with the crew and armament obtained here, and so departing and capturing belligerent property, violates our neutrality laws, and her prizes coming within our jurisdiction will be restored.

A *bona-fide* termination of the cruise for which the illegal armament was here obtained, puts an end to the disability growing out of the violation of our neutrality laws, which does not attach indefinitely; but a colorable termination has no such effect.

Appeal from the circuit court of the United States for the district of Maryland.

This was a libel filed in the district court of Maryland, by the consul-general of Portugal, alleging that a large sum of money in silver and gold coins had been, in the year 1818, taken out of the Portuguese ship Gran Para, then bound on a voyage from Rio Janeiro to Lisbon, by a private-armed vessel, called the Irresistible, which had been fitted out in the United States in violation of the neutrality acts; that the said sum of money had been brought within our territorial jurisdiction, and deposited in the Marine Bank of Baltimore; and praying that the same might be restored to the original Portuguese owners. A claim was filed by one Stansbury, as agent for John D. Daniels, master and owner of the Irresistible, stating him to be a citizen of the Oriental Republic, which was at war with Portugal, and that he was cruising under the flag and commision of that republic at the time the capture was made, as set forth in the libel, and insisting on his title to the money as lawful prize of war. By the proofs taken in the cause it appeared that the capturing vessel was built in the port of Baltimore, in the year 1817, and was, in all respects, constructed for the purposes of war. On the 16th of February, 1818, after being launched, she was purchased by the claimant, Daniels, then a citizen of the United States. A crew of about fifty men were enlisted in Baltimore, and she cleared out for Teneriffe, having in her hold twelve 18-pound gunnades with their carriages, and a number of small arms, and a quantity of ammunition entered outward as cargo. The vessel proceeded directly to Buenos Ayres, where she remained a few weeks, during which time the crew was discharged.

Having obtained a commission from the government at that place to cruise against Spain, a crew was enlisted, consisting chiefly of the same persons who had come in the vessel from Baltimore; and that she sailed in June, 1818, on a cruise under the command of the claimant. The

next day after she left the port, a commission from General Artigas, as chief of the Oriental Republic was produced, under which the claimant declared that he intended to cruise, and that granted by the government of Buenos Ayres was sent back to that place. During this cruise, several Portuguese vessels were captured, and the money, the restitution of which was prayed for by the libelant, was taken out of them. In September, 1818, the Irresistible returned to Baltimore, and a large sum of money, captured during the cruise, was deposited in the bank.

Decrees were entered in the district and circuit courts, restoring the property to the original owners, and the cause was brought, by appeal, to this court.

Winder, for the appellant and claimant.

D. Hoffman, contra.

MARSHALL, Chief Justice, delivered the opinion of the court, and, after stating the facts, proceeded as follows:

The principle is now firmly settled that prizes made by vessels which have violated the acts of Congress that have been enacted for the preservation of the neutrality of the United States, if brought with their territory, shall be restored. The only question, therefore, is, does this case come within the principle?

That the Irresistible was purchased, and that she sailed out of the port of Baltimore, armed and manned as a vessel of war, for the purpose of being employed as a cruiser against a nation with whom the United States were at peace, is too clear for controversy. That the arms and ammunition were cleared out as cargo cannot vary the case. Nor is it thought to be material that the men were enlisted in form or for a common mercantile voyage. There is nothing resembling a commercial adventure in any part of the transaction. The vessel was constructed for war, and not for commerce. There was no cargo on board but what was adapted to the purposes of war. The crew was too numerous for a merchantman, and was sufficient for a privateer. These circumstances demonstrate the intent with which the Irresistible sailed out of the port of Baltimore.

But she was not commissioned as a privateer, nor did she attempt to act as one until she reached the river La Plata, when a commission was obtained and the crew re-enlisted. This court has never decided that the offense adheres to the vessel, whatever changes may have taken place, and cannot be deposited at the termination of the cruise in preparing for which it was committed? and, as the Irresistible made no prize on her passage from Baltimore to the river La Plata, it is contended that the offense was deposited there, and that the court cannot connect her subsequent cruise with the transactions of Baltimore.

If this were to be admitted in such a case as this, the laws for the preservation of our neutrality would be completely eluded, so far as this enforcement depends on the restitution of prizes made in violation of them. Vessels completely fitted in our ports for military operations, need only sail to a belligerent port, and there, after obtaining a commission, go through the ceremony of discharging and re-enlisting their crew, to become perfectly legitimate cruisers, purified from every taint
[92] contracted at *the place where all their real force and capacity for annoyance was acquired. This would, indeed, be a fraudulent neutrality, disgraceful to our own Government, and of which no nation would be the dupe. It is impossible for a moment to disguise the facts that the arms and ammunition taken on board the Irresistible at Baltimore were taken for the purpose of being used on a cruise,

and that the men there enlisted, though engaged, in form, as for a commercial voyage, were not so engaged in fact. There was no commercial voyage, and no individual of the crew could believe that there was one. Although there might be no express stipulation to serve on board the Irresistible after her reaching the La Plata, and obtaining a commission, it must be completely understood that such was to have been the fact. For what other purpose could they have undertaken this voyage? Everything they saw, everything that was done, spoke a language too plain to be misunderstood.

The act of June 5, 1794, section 2,[1] declares, that "if any person shall, within the territory or jurisdiction of the United States," "hire or retain another person to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince or state, as a soldier, or as a mariner or seaman, on board of any vessel of war, letter of marque, or privateer, every person so offending shall be guilty of a high misdemeanor," &c.

Now, if the crew of the Irresistible were not enlisted in the port of Baltimore, to cruise under the commission afterward obtained, it cannot, we think, be doubted but that they were "hired or retained to go beyond the limits or jurisdiction of the United States, with intent to be enlisted or entered" into that service. For what other purpose were they hired in the port of Baltimore for the voyage to La Plata?

The 3d section makes it penal for any person, within any of the waters of the United States, to be "knowingly concerned in the furnishing, fitting out, or arming of any ship or vessel, with the intent that such ship or vessel shall be employed in the service of any foreign prince or state, to cruise," &c.

It is too clear for controversy, that the Irresistible comes within this section of the law also.

The act of 1817, cap. 58,[2] adapts the previous laws to the actual situation of the world, by adding to the words "of any foreign prince or state," the words "or of any colony, district, or people," &c. The act of April, 1818, cap. 88,[3] re-enacts the acts of 1794, 1797,[4] and 1817, with some additional provisions.

It is, therefore, very clear that the Irresistible was armed and manned in Baltimore, in violation of the laws and of the neutral obligations of the United States. We do not think that any circumstances took place in the river La Plata by force of which this taint was removed. To the objection, that there is no proof that any part of the money was taken out of a vessel called the Gran Para, it need only be answered, that the allegation of the libel is that she was called the "Gran Para, or by some other name."

Decree affirmed, with costs.

The United States *vs.* John D. Quincy.

The United States vs. Quincy

6 P., 445.

Under the third section of the act of April 20, 1818, (3 Stats. at Large, 448,) it is not necessary that the vessel should be armed or in a condition to commit hostilities, on leaving the United States, in order to convict one indicted for being concerned in fitting out a vessel with intent that she should be employed, &c. It is sufficient if

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[1] Statutes at Large, p. 383.
[2] Ibid., iii, p. 370.
[3] Ibid., iii, p. 447.
[4] Ibid., iv, p. 497.

the defendant was knowingly concerned in fitting out or arming the vessel, with intent, &c., though that intent should appear to have been defeated after the vessel sailed.

But if the defendant had no fixed intention, when the vessel sailed, to employ her as a privateer, but only a wish so to employ her if he could obtain funds, on her arrival at a foreign port, for the purpose of arming her, then he is not guilty.

The case is stated in the opinion of the court.

Williams, (district attorney for Maryland,) for the United States.

Wirt, contra.

THOMSON, J., delivered the opinion of the court.

This case comes up from the circuit court of the United States for the Maryland district, on a division of opinion of the judges upon certain instructions prayed for to the jury.

The indictment upon which the defendant was put upon his trial contains a number of counts to which the testimony did not apply, and which are not now drawn in question. The 12th and 13th are the only counts to which the evidence applies, and the offense charged in each of these is substantially the same, to wit, that the said John D. Quincy, on the 31st day of December, 1828, at the district of Maryland, &c., with force and arms, was knowingly concerned in the fitting out of a certain vessel called the Bolivar, otherwise called Las Damas Argentinas, with intent that such vessel should be employed in the service of a foreign people, that is to say, in the service of the United Provinces of Rio de la Plata, to commit hostilities against the subjects of a foreign prince; that is to say, against the subjects of His Imperial Majesty the constitutional Emperor and perpetual defender of Brazil, with whom the United States then were and still are at peace, against the form of the act of Congress in such case made and provided.

[93] *The act of Congress under which the indictment was found (6th vol. Laws U. S., 321, § 3) declares "that if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming of any ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, &c., every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than $10,000 and imprisoned not more than three years," &c.

The testimony being closed, several prayers, both on the part of the United States and of the defendant, were presented to the court for their opinion and direction to the jury, and upon which the opinions of the judges were opposed, and which will now be noticed in the order in which they were made.

On the part of the defendant the court was requested to charge the jury that if they believed that when the Bolivar left Baltimore, and when she arrived at St. Thomas, and during the voyage from Baltimore to St. Thomas, she was not armed or at all prepared for war, or in a condition to commit hostilities, the verdict must be for the defendant.

The prayer on the part of the United States upon this part of the case was, in substance, that if the jury find from the evidence that the defendant was within the district of Maryland, knowingly concerned in the fitting out the privateer Bolivar with intent that she should be employed in the manner alleged in the indictment, then the defendant was guilty of the offense charged against him, although the jury should find

that the equipments of the said privateer were not complete within the United States, and that the cruise did not actually commence until men were recruited and further equipments were made at the island of St. Thomas, in the West Indies.

The instruction which ought to have been given to the jury under these prayers involves the construction of the act of Congress touching the extent to which the preparation of the vessel for cruising or committing hostilities must be carried before she leaves the limits of the United States, in order to bring the case within the act.

On the part of the defendant it is contended that the vessel must be fitted out and armed, if not complete, so far at least as to be prepared for war, or in a condition to commit hostilities. We do not think this is the true construction of the act. It has been argued that although the offense created by the act is a misdemeanor, and there cannot, legally speaking, be principal and accessory, yet the act evidently contemplates two distinct classes of offenders—the principal actors, who are directly engaged in preparing the vessel, and another class who, though not the chief actors, are in some way concerned in the preparation.

The act in this respect may not be drawn with very great perspicuity; but should the view taken of it by the defendant's counsel be deemed correct, (which, however, we do not admit,) it is not perceived how it can affect the present case; for the indictment, according to this construction, places the defendant in the secondary class of offenders; he is only charged with being knowingly concerned in the fitting out the vessel with intent that she should be employed, &c. To bring him within the words of the act it is not necessary to charge him with being concerned in fitting out and arming. The words of the act are, "fitting out or arming." Either will constitute the offense. But it is said such fitting out must be of a vessel armed and in a condition to commit hostilities, otherwise the minor actor may be guilty when the greater would not; for as to the latter there must be a fitting out and arming in order to bring him within the law. If this construction of the act be well founded, the indictment ought to charge that the defendant was concerned in fitting out the Bolivar, being a vessel fitted out and armed, &c. But this, we apprehend, is not required. It would be going beyond the plain meaning of the words used in defining the offense. It is sufficient if the indictment charges the offense in the words of the act; and it cannot be necessary to prove what is not charged. It is true that with respect to those who have been denominated at the bar the chief actors, the law would seem to make it necessary that they should be charged with fitting out and arming. These words may require that both should concur, and the vessel be put in a condition to commit hostilities, in order to bring her within the law. But an attempt to fit out and arm is made an offense. This is certainly doing something short of a complete fitting out and arming. To attempt to do an act does not, either in law or in common parlance, imply a completion of the act or any definite progress toward it. Any effort or endeavor to effect it will satisfy the terms of the law.

This varied phraseology in the law was probably employed with a view to embrace all persons of every description who might be engaged, directly or indirectly, in preparing vessels with intent that they should be employed in committing hostilities against any powers with whom the United States were at peace. Different degrees of criminality will necessarily attach to persons thus engaged; hence the great latitude

given to the courts in affixing the punishment, namely, a fine not more than $10,000 and imprisonment not more than three years.

We are accordingly of opinion that it is not necessary that the jury should believe or find that the Bolivar, when she left Baltimore, and when she arrived at St. Thomas, and during the voyage from Baltimore to St. Thomas, was armed or in a condition to commit hostilities, in order to find the defendant guilty of the offense charged in the indictment.

The first instruction, therefore, prayed on the part of the defendant must be denied, and that on the part of the United States given.

The second and third instructions asked on the part of the defendant were:

That if the jury believe that when the Bolivar was fitted out and equipped at Baltimore the owner and equipper intended to go to the West Indies in search of funds with which to arm and equip the said vessel, and had no present intention of using or employing the said vessel as a privateer, but intended, when he equipped her, to go to the West Indies to endeavor to raise funds to prepare her for a cruise, then the defendant is not guilty.

[94] *Or if the jury believe that when the Bolivar was equipped at Baltimore, and when she left the United States, the equipper had no fixed intention to employ her as a privateer, but had a wish so to employ her, the fulfillment of which wish depended on his ability to obtain funds in the West Indies for the purpose of arming and preparing her for war, then the defendant is not guilty.

We think these instructions ought to be given. The offense consists principally in the intention with which the preparations were made. These preparations, according to the very terms of the act, must be made within the limits of the United States; and it is equally necessary that the intention with respect to the employment of the vessel should be formed before she leaves the United States; and this must be a fixed intention, not conditional or contingent, depending on some future arrangements. This intention is a question belonging exclusively to the jury to decide. It is the material point on which the legality or criminality of the act must turn, and it decides whether the adventure is of a commercial or warlike character.

The law does not prohibit armed vessels belonging to citizens of the United States sailing from out of our ports; it only requires the owners to give security (as was done in the present case) that such vessels shall not be employed by them to commit hostilities against foreign powers at peace with the United States.

The collectors are not authorized to detain vessels, although manifestly built for warlike purposes and about to depart from the United States, unless circumstances shall render it probable that such vessels are intended to be employed by the owners to commit hostilities against some foreign power at peace with the United States.

All the latitude, therefore, necessary for commercial purposes is given to our citizens, and they are restrained only from such acts as are calculated to involve the country in war.

The second and third instructions asked on the part of the United States ought also to be given; for if the jury shall find (as the instructions assume) that the defendant was knowingly concerned in fitting out the Bolivar within the United States, with the intent that she should be employed as set forth in the indictment, that intention being defeated by what might afterward take place in the West Indies, would not purge the offense which was previously consummated. It is not neces-

sary that the design or intention should be carried into execution in order to constitute the offense.

The last instruction or opinion asked on the part of the defendant was:

That according to the evidence in the cause, the United Provinces of Rio de la Plata is, and was at the time of the offense alleged in the indictment, a government acknowledged by the United States, and thus was a state and not a people within the meaning of the act of Congress under which the defendant is indicted, the word "people" in that act being intended to describe communities under an existing government not recognized by the United States, and that the indictment, therefore, cannot be supported on this evidence.

The indictment charges that the defendant was concerned in fitting out the Bolivar with intent that she should be employed in the service of a foreign people; that is to say, in the service of the United Provinces of Rio de la Plata. It was in evidence that the United Provinces of Rio de la Plata had been regularly acknowledged as an independent nation by the executive department of the Government of the United States before the year 1827, and therefore it is argued that the word "people" is not properly applicable to that nation or power.

The objection is one purely technical, and we think not well founded. The word "people," as here used, is merely descriptive of the power in whose service the vessel was intended to be employed; and it is one of the denominations applied by the act of Congress to a foreign power. The words are, "in the service of any foreign prince or state, or of any colony, district, or people." The application of the word "people" is rendered sufficiently certain by what follows under the *videlicet*, "that is to say, the United Provinces of Rio de la Plata." This particularizes that which by the word "people" is left too general. The descriptions are in no way repugnant or inconsistent with each other, and may well stand together. That which comes under the *videlicet* only serves to explain what is doubtful and obscure in the word "people."

This instruction must therefore be denied, and the one asked on the part of the United States—viz, that the indictment is sufficient in law—must be given.

These answers must accordingly be certified by the circuit court.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Maryland, and on the points and questions on which the judges of the said circuit court were opposed in opinion, and which were certified to this court for its opinion, agreeably to the act of Congress in such case made and provided, and was argued by counsel, on consideration whereof it is the opinion of this court:

1. That it is not necessary that the jury should believe or find that the Bolivar, when she left Baltimore, and when she arrived at St. Thomas, and during the voyage from Baltimore to St. Thomas, was armed or in a condition to commit hostilities, in order to find the defendant guilty of the offense charged in the indictment. Therefore the first instruction prayed for on the part of the defendant must be denied and that on the part of the United States given.

2. That the second and third instructions asked for on the part of the defendant should be given.

3. That the second and third instructions asked for on the part of the United States should also be given.

4. That the fourth instruction asked for on the part of the defendant must be denied, and the one asked on the part of the United States—viz, that the indictment is sufficient at law—must be given.

[95] *UNITED STATES AND SPAIN.

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3	.....do.....	Jan. 16, 1817	Spanish schooner Hipolita captured by the Jupiter in the mouth of the Mississippi.	101	170
4	.....do.....	Jan. 16, 1817	Satisfaction at capture of the Mongore or Swift by the marshal of Baltimore.	102	171
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6	.....do.....	Feb. 11, 1817	Complaining of the liberation of the captain and crew of the Mongore.	102	172
7	.....do.....	Feb. 12, 1817	Requesting the arrest of Captain Chase of the privateer Potosi, or Spartan, who is now at Baltimore.	103	174
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11	Don Luis de Onis to Mr. Rush.	Mar. 15, 1817	Gratification at passage of act for preserving neutral relations.	105	177
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14	Mr. Rush to Don Luis de Onis.	Mar. 28, 1817	United States Government are making inquiry into the allegations contained in his notes; redress, if required, will be enforced.	106	179
15	Don Luis de Onis to Mr. Rush.	Mar. 29, 1817	Considers that there is already sufficient evidence for proceeding against the above vessels.	107	180
16	.....do.....	Apr. 4, 1817	Transmitting evidence against the Independencia del Sud and the Congress.	108	181
17	.....do.....	Apr. 5, 1817	Further evidence.....	109	184
18	.....do.....	Apr. 18, 1817	Courts at Baltimore decline to take cognizance of the case of the Congress.	110	185
19	.....do.....	Apr. 19, 1817	Authorities at Norfolk decline to arrest the Independencia del Sud and the Atrevida, or to seize the property landed by them.	110	185
20	Mr. Rush to Don Luis de Onis.	Apr. 22, 1817	Has he authority to conclude a treaty for settlement of differences?	116	192
21	Don Luis de Onis to Mr. Rush.	Apr. 23, 1817	Thinks that his instructions have been intercepted; has applied for fresh ones.	116	193
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23	.....do.....	Sept. 2, 1817	Viceroy of New Spain complains of violations of neutrality by American vessels.	117	195

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25	....do....	Nov. 2, 1817	Protest against proceedings of the Lively and General M'Gregor.	118	197
26	[98] do....	Nov. 2, 1817	Prizes captured at the Philippines by the Independencia del Sud and the Mongore. Demands restitution of the plunder.	121	201
27	....do....	May 7, 1818	Demands proceedings against Joseph Bonaparte and others who are organizing an expedition against Mexico.	123	203
28	....do....	June 9, 1818	Baltimore authorities will not enforce laws against privateers under Buenos Ayres flag. Demands restitution of prizes.	123	204
29	....do....	July 27, 1818	Demands the seizure of two frigates being built at New York for the government of Buenos Ayres: the Curiago and Horatio.	124	206
30	....do....	July 28, 1818	Transmitting further evidence respecting the above vessels.	127	210
31	Mr. J. Q. Adams to Don Luis de Onis.	Aug. 24, 1818	No transgression of the law has been proved against the two vessels.	129	212
32	Don Luis de Onis to Mr. J. Q. Adams.	Oct. 24, 1818	Proposals for an adjustment of all differences.	129	212
33	Mr. J. Q. Adams to Don Luis de Onis.	Oct. 31, 1818	The United States accept the proposals with certain modifications. A mixed commission for the settlement of claims to be established.	130	213
34	Don Luis de Onis to Mr. J. Q. Adams.	Nov. 16, 1818	Accepts modifications. List of ships fitted out in United States, and of ships and property captured by them.	131	215
35	....do....	Feb. 22, 1821	Proclamation of President Monroe, promulgating the treaty of 1819 between the United States and Spain.	134	220

[99] *CORRESPONDENCE BETWEEN THE UNITED STATES AND SPAIN.

No. 1.

Don Luis de Onis to Mr. Monroe.

[Translation.]

WASHINGTON, *January* 2, 1817.

SIR: The mischiefs resulting from the toleration of the armament of privateers in the ports of this Union, and of bringing into them, with impunity, the plunder made by these privateers on the Spanish trade, for the purpose of distributing it among those merchants who have no scruple in engaging in these piracies, have risen to such a height that I should be wanting in my duty if I omitted to call your attention again to this very important subject.

It is notorious, that although the speculative system of fitting out privateers, and putting them under a foreign flag, one disavowed by all nations, for the purpose of destroying the Spanish commerce, has been more or less pursued in all the ports of the Union, it is more especially in those of New Orleans and Baltimore, where the greatest violations of the respect due to a friendly nation, and if I may say so, of that due to themselves, have been committed; whole squadrons of pirates having been [fitted] out from thence, in violation of the solemn treaty existing between the two nations, and bringing back to them the fruits of their piracies, without being yet checked in these courses, either by the reclamations I have made, those of His Majesty's consuls, or the decisive and judicious orders issued by the President for that purpose.

The American privateer Swift, which, as I mentioned to you in my note of the day before yesterday, had captured, under the name of the Mongore, and the flag of Buenos Ayres, the Spanish polacre Pastora, just arrived at New Bedford, is now in Baltimore River, and her captain, James Barnes, who has so scandalously violated the laws of nations, the neutrality of this Government, and the existing treaty, has had the effrontery to make a regular entry of his vessel at the custom-house of Baltimore, declaring his cargo to consist of bales and packages containing silks, laces, velvets, and other valuable articles, all, as you may suppose, plundered from the Spaniards.

The three-masted schooner called the Intrepid, lately arrived at New York, from Monte Video, is, as His Majesty's consul there informs me, the Spanish vessel called the Leona, captured off Cadiz, by the schooner Orb, of Baltimore, whose armament I denounced to you at the time, and communicated the positive information I had received, that her object was to cruise against the subjects of the King, my master. This pirate (for that is the name by which both nations have agreed to consider a privateer of this description) was armed at Baltimore, manned by subjects of this Republic, and commanded by a Portuguese called Almeyda, an American citizen.

The schooner Leona, now at New York under the name of the Intrepid, and ostensibly owned by one Miffling, at Philadelphia, had on board, when captured, $30,000 in specie, 300 boxes of sugar, some grain, with other property belonging to Moreno, De Moro, and others, merchants at Cadiz; and had a cargo of jerked beef, and other articles, belonging, as I have heard, to the merchants in Baltimore, who furnished the funds for equipping the Orb.

The consul at New Orleans informs me that the pirate Mitchell, with the vessels under his command, fitted out by different merchants at that port, of whom a Mr. Dupuy is supposed to be principal, has lately taken several Spanish prizes to Galveston, and that from the proceeds of their sales he has remitted to the said deputies $105,000, which he has deposited in the Bank of Louisiana, after deducting the shares of the captain and crew, amounting, as is supposed, altogether to $200,000. The same consul adds that two of the prizes, one from Campeachy, and the other from Guatemala, were burnt, and their crews landed by that savage monster, near Boquilla de Piedras, that they might be, as they actually were, put to death by his great friend, Villapinto, a noted rebel ringleader, who, being pursued by the King's troops, had retreated to the sea-shore to make his escape. Of ninety men composing these crews, only nine were saved.

The consul at Norfolk informs me of the arrival there of a pri-
[100] vateer schooner from Buenos *Ayres, one of several fitted out at Baltimore, and wholly owned there; that from what he has been able to ascertain, among other vessels she plundered a Spanish ship, laden with a cargo of cochineal, indigo, and specie, to the amount of more than $200,000, and proceeded to Baltimore to divide the spoil among the concerned. The said consul, in the discharge of his duty and exercise of his rights, addressed an application to the collector of the customs, copy of which is annexed, and also of the answer of the collector, by which you will perceive that he declines this just reclamation. I could cite innumerable other cases, as well attested as those I have just stated, but I omit them, as their detail would fatigue you, without tending to demonstrate more effectually that they proceed from the non-observance by the officers of this Government of the President's proclamation, and of the treaty of limits and navigation between the two governments. Although His Majesty has too much confidence in the rectitude of the President to doubt that due compensation will be made for these injuries to his subjects, on the same principles as have been observed by His Majesty, on other occasions, toward the United States, yet I cannot omit requesting, in his royal name, that in the meanwhile the President may be authorized to take the most energetic measures required by the case to put an end to these practices, and that he would be pleased to cause the vessels I have before mentioned to be confiscated, together with their cargoes—and security to be given by Mr. Dupuy for the amount of his deposit in the Bank of Louisiana, as being the proceeds of the Spanish prizes made by the pirate Mitchell; and that, as a general measure, every privateer coming into these ports under a flag not acknowledged, be detained and sequestered, to be made responsible for the depredations committed by it.

I trust that the President will be the more disposed to accede to this request, as, in addition to its justice, it is strictly conformable to his friendly sentiments toward my sovereign, and the humane principles by which he is characterized.

I have, &c.,

(Signed) LOUIS DE ONIS.

[Inclosure 1 in No. 1.]

Don Antonio Villalobos to Mr. Mallory.

[Translation.]

SPANISH CONSUL'S OFFICE, *December* 16, 1816.

SIR: On seeing an armed vessel in this harbor, in front of the town, displaying a flag unknown to me, and, I will venture to say, unknown to the United States, and at any rate not recognized by them; and there being no doubt that this vessel is one of those known to be committing great depredations at sea on the Spanish trade, and frequently also on ships of all other nations, not excepting those under the merchant flag of these States, I have thought it my duty to apply to you to request you to give me some information respecting said armed vessel, her character and nationality, and under what authority she navigates the seas as a public or private ship of war, who commands her, and how she is manned, and in what light you view her in your official capacity.

In making these inquiries of you I hope that you will only see a desire on my part to acquire information upon a question of vast importance to the commerce of Spain, as it affects materially the safety of her merchant-ships, whether or not those sea-plunderers are to find an asylum in the ports of the United States, which would so greatly increase their means of carrying on their spoliations. I am confident that it is not the wish of this Government to afford any sort of protection to a set of men (for the most part foreigners to the country they pretend to serve) who avail themselves of the dissensions which unfortunately prevail between Spain and some of her colonies to exercise their merciless rapacity upon the inoffensive merchant, not only of Spain, but, in many instances, of other countries, and I am too well acquainted with your own character to suppose that you would be inclined to favor them. Indeed, the intentions and good disposition of this Government toward Spain are rendered manifest in the President's proclamation of the 1st September, 1815; and it is there forbidden to American citizens to take any part in the contentions between Spain and some of her distant possessions; and it is enjoined upon all officers, civil and military, under the Government, to be vigilant in searching out and bringing to punishment all such citizens as shall act contrary to the intent of said proclamation; and there being a report in town that many of those composing the crew of the vessels in question are Americans, I have thought it necessary to call your attention to this point, not doubting that you will consider it as meriting your particular examination.

I will conclude by availing myself, &c.,

(Signed) ANTONIO ARGOTE VILLALOBOS.

[Inclosure 2 in No. 1.]

Mr. Mallory to Don Antonio Villalobos.

COLLECTOR'S OFFICE, *Norfolk, December* 16, 1816.

SIR: I have had the honor of receiving your note of this morning. In respect to the vessel which is the subject of it, I deem it necessary only to remark that she is recognized in this office in no other character than that of any other foreign vessel arriving in our waters from a foreign port; that my duty does not require of me to request her flag, so far as to make it a criterion or condition of her admission into this port, and that I shall take care in this, as in other cases, to see that the laws of the United
[101] States, and other regulations of the Government, so far as they come within the sphere of my authority, be duly observed.

I reciprocate, &c.,

(Signed) CHARLES K. MALLORY.

No. 2.

Don Luis de Onis to Mr. Monroe.

[Translation.]

WASHINGTON, *January* 15, 1817.

SIR: On the 1st instant I informed you of the arrival at New Bedford of the Spanish polacre Pastora, captured by the American privateer

Swift, under the name of the Mongore, and the flag of Buenos Ayres, commanded by a Captain Barnes, a citizen of these States. Two days afterward I addressed to you another note, stating the arrival in the river and port of Baltimore of the said privateer, with the booty piratically plundered from the subjects of the King, my master, and requesting that you would be pleased to obtain of the President such orders as would most effectually insure the confiscation both of the vessel and of the privateer, that they might be made answerable for the damages justly claimed by the owners of the property. Although I am persuaded that it is the multiplicity of business that has prevented your answering my notes, yet I cannot doubt that the President will have given the orders I requested in them. Notwithstanding this, and the application made by His Majesty's consul at Baltimore, in the discharge of his duty, to the attorney for that district, a copy of which is annexed, I regret to announce to you that the collector and the aforesaid attorney have thought fit to allow the said pirate to depart, and that, after having ascertained that fact, the said attorney wrote a note to His Majesty's consul, a copy of which is inclosed, inviting him to call at his house to confer with him on the subject of his note.

It is not my wish to trespass on your attention with the reflections that are naturally produced by such notorious proceedings, nor pointedly to notice the incivility of the attorney for that State toward a consul of my nation; my only object is to bring to your view what has occurred in the case of the vessel, that by submitting it to the President he may be convinced that the injuries sustained by the King's subjects in these ports, by the violation of the existing treaty between the two nations, which has the force of a law, are daily augmenting, and that the more they are diffused the more difficult will it be hereafter to adjust the indemnities due to His Majesty's subjects.

I trust, sir, that you will only see in the step I now take a continued proof of my desire to restore that good understanding and sincere sense of justice between the two countries which form the basis of real harmony in every society, and that you will, therefore, be induced to give this subject all the attention due to its importance.

I renew, &c.,

(Signed) LUIS DE ONIS.

No. 3.

Don Luis de Onis to Mr. Monroe.

[Translation.]

WASHINGTON, *January* 16, 1817.

SIR: I have just received information from the King's consul at New Orleans of the capture, within sight of the Balize of that port, and at little more than musket-shot from the land, of the Spanish schooner Hipolita, Captain Don Buenaventura March, by the pirate Jupiter, under the Margarita flag. To enable you fully to judge of the atrociousness of this capture, manifestly in violation of the territory of the United States, I have the honor to inclose the declaration of the captain of the said schooner, made before His Majesty's consul at the aforesaid port, by which it appears he was at anchor in the Pass of the Mississippi, and with *pratique* from the Balize, on board, when he was boarded by the aforesaid pirate, and so inhumanly treated by him as to be left weltering in his blood on the deck.

It would be superfluous to affect your sensibility by a detail of the multiplied injuries and outrages incessantly sustained by His Majesty's subjects in these ports; they have already been admitted by the President in his message to Congress, recommending the adoption of such measures as in their wisdom may appear best calculated to repress them, thereby offering to the King, my master, a pledge that His Excellency admits the necessity of indemnifying them as far as possible. It is, however, with great regret that I have to remark on the delay in carrying such urgent measures into execution, and that the injuries complained of have not been prevented by a due observance of the laws of nations, and of the existing treaty, which, by the Constitution, has the force of a law in all the courts, in consequence of its ratification by the President and the Senate.

Accept, &c.,
(Signed) LUIS DE ONIS.

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[102] *No. 4.

Don Luis de Onis to Mr. Monroe.

[Translation.]

WASHINGTON, *January* 16, 1817.

SIR: I have just learned, with the greatest satisfaction, that the marshal of Baltimore has dispatched a boat with a picket of soldiers in pursuit of the pirate Mongore, which has been brought back to that port, in conformity to the orders which I had flattered myself would have been issued by the President. I shall lose no time in giving an account to His Majesty of the friendly dispositions manifested by this Government, and add the hope that this evidence of it will be the forerunner of sentiments calculated to remove every shadow of misunderstanding between the two governments.

I offer, &c.,
(Signed) LUIS DE ONIS.

No. 5.

Don Luis de Onis to Mr. Monroe.

[Translation.]

WASHINGTON, *February* 10, 1817.

SIR: In addition to the schooner Hipolita, which I informed you in my note of the 16th of last month had been captured by the pirate Jupiter, in the Pass of the Balize of New Orleans, at anchor, within musket-shot of the land, I have just received official notice of the capture by the same pirate of the Spanish brig called Reyna de los Angeles, proceeding from Campeche. This vessel was also at anchor in the Balize, very near the land, and with the pilot on board to ascend the river, but no consideration was sufficient to restrain that pirate in his injustice. I am informed that Commodore Patteson, in consequence of the reclamation made by the consul of His Majesty in the said port, has dispatched a vessel in pursuit of her, and there are appearances that

he will succeed in rescuing the prizes, and placing them at the disposition of their owners; but you cannot but know that if the perpetration of this crime go unpunished, as has been the case on other occasions, or if their escape is permitted, as has happened in Baltimore, with the captain and crew of the pirate Mongore, neither the vessels of His Majesty will be able to obtain the evidence which might be drawn from their declarations, in order to reclaim their property, nor the crimes discovered that they may have committed, nor the number of these robbers be diminished, who so highly compromit the neutrality of the Government, robbing indiscriminately the vessels of all nations, confident that all the harm that can happen to them is that they should be deprived of some of the proceeds of their piracies.

In proof of the solidity of these assertions, I ought to add, that at the time these captures took place at New Orleans, in violation of the territory of this republic, General Humbert, the chief of a band of robbers, armed and equipped, in the province of Louisiana, who had occupied Galveston, had arrived at New Orleans, to solicit provisions and munitions for that establishment. Not only have they been sent under the American flag, but the agent, M. de Souvinet, has bought a brig with the products of the robberies of these pirates, which are now deposited in the Bank of Louisiana, amounting to $180,000, as you will see by the annexed paragraph of the Gazette of New Orleans; and this vessel is preparing to carry more provisions and munitions to that establishment, and to take back to the United States the spoils of the Spaniards, which are not considered secure in that place.

In the port of Baltimore, the brig Peace, (Paz,) mounting 16 guns, commanded by Captain Stafford, well known for having before commanded the privateer schooner Maria, which was confiscated in Port au Prince, has been lately bought for the purpose of cruising against the Spanish commerce. According to information which I have received, the brig, called the Fourth of July, has gone out of that port with the same object, commanded by Captain Watkins, and armed by order of the famous Thomas Taylor, commissioner of Buenos Ayres; finally, the schooner Romp, whose outrages and piracies are of public notoriety, has again sailed for Norfolk, with the design of equipping there, to proceed again on her cruise.

I consider it my duty to make you acquainted with all these acts, which are in manifest contravention of the treaty existing between the two nations, to the end that the President, giving them the consideration which they deserve, may issue the orders that may appear to him best adapted to restrain them, until Congress determines to destroy them at the root, whereby the commerce of all nations may be secure.

I renew, &c.,

(Signed) LUIS DE ONIS.

No. 6.

Don Luis de Onis to Mr. Monroe.

[Translation.]

WASHINGTON, *February* 11, 1817.

SIR: When I had the honor to communicate to you, that in virtue of the orders which the President had sent to the marshal at Baltimore,

the pirate Mongore had been detained and embargoed in that port, I had a right to believe that the marshal, as well as the attorney of the United States, would have caused the captain and crew to be immediately arrested, to take from them the declarations which public vengeance, and the interests of Spain, as well as of this Govern-
[103] ment, required, to ascertain *the names of the vessels plundered by that pirate, the depository of the effects, and the fate of the Spanish crews.

You may consider what was my surprise on receiving positive information that the marshal has liberated the captain and crew of that pirate, that he has not proceeded to take from them any declaration, and has even permitted that the Mongore should go to sea again, under bond, to commit her piracies. The said vessel is yet in the river, stopped by the ice, and her captain, Barnes, very tranquil in his house, occupied in taking out of it, publicly, the effects plundered by him, which, it is calculated, exceed $80,000 in value, without any impediment being put to his proceedings by the authorities at Baltimore.

It is extremely painful to me to interrupt your attention so often on such unpleasant subjects; but I should be wanting in my duty if I should delay to inform this Government of the manner in which the orders of the President are eluded in Baltimore, in order to heap injury upon injury on a friendly nation, and promote the revolution of its provinces. In vain will it be alleged, in order to cover this proceeding, that the laws are not sufficient to pursue, without positive evidence, those citizens who commit hostilities against Spain; the treaty which exists between the two nations is a law of the republic, and no tribunal can decline its observance. The proofs of its infraction cannot be more manifest or decisive; the Spanish schooner captured by this same vessel, which is permitted to go out to sea, is now in a port of this Union, the effects on board of the one and the other belonging to the King's vassals; the seamen, the log-book of the respective vessels, and the captain himself, ought to give all the evidence that justice requires, to decide; if these are not examined, on the equivocal pretext that they cannot be found, or that there is no evidence for proceeding against them, the consequence will be the continuation of an organized piracy for the robbery of all nations; that public vengeance will remain unsatisfied; and humanity exposed to all the horrors of such highway robbers.

I cannot do less than repeat my solicitation to the President, in the name of the King, my master, that the corsair Mongore may be secured, that the effects found on board may be deposited, as well as those which may have been already discharged from her, that the papers on board be examined, as well as the journals, crew, and captain, and that it be proposed to make all the investigations that would, under similar circumstances, be made in Spain, if a like case should occur to the United States, in order to prevent the damages and remedy their repetition.

I flatter myself that you cannot fail to find my solicitude just, and that the President will accede the more cheerfully to it, as it is agreeable to the sentiments of humanity and impartiality which characterize him, and to the desire which he has manifested to me to strengthen the bonds of friendship with my sovereign.

I renew, &c.,

(Signed) LUIS DE ONIS.

No. 7.

Don Luis de Onis to Mr. Monroe.

[Translation.]

WASHINGTON, *February* 12, 1817.

SIR: After my official letters of the 10th and 11th of this month were written, I received advice from Baltimore that Captain John Chase was now there, and that it was understood that he had left the command of the privateer Potosi, (*alias* the Spartan, of Baltimore,) and likewise that there were in that city more than thirty officers and sailors who had belonged to the said privateer, and who had come there for the purpose of claiming from the said Chase their portion of the prize-money from the Spanish ship Ciencia, of which they had taken possession at sea, in the manner you will see detailed in the declarations of four of the sailors of the said privateer, copies of which are inclosed.

This, without doubt, is a case which merits all your attention, as it is proved, in the most positive manner, that a certain number of American citizens had armed and equipped a vessel in Baltimore, had gone to sea in her, and had committed an act of hostility against Spain, contrary to the laws of nations and in violation of the fourteenth and of other articles of the treaty existing between the two nations; thus compromitting the dignity of the United States, which cannot but disapprove such conduct, and violating the rights of the King, my master.

The consul of His Majesty in Baltimore has, without loss of time, proceeded judicially against the before-mentioned John Chase by soliciting his arrest, and at the same time is taking measures to attach, in the hands of Mr. Didier, merchant, of Baltimore, twenty-odd thousand dollars, which it is known he has received from the said prize; but I see at once all the efforts of the consul will be in vain, unless this Government interpose all their authority, by giving the proper orders for vindicating their own dignity, which has been compromitted by the atrocious conduct of these bad citizens. I do not deem it necessary to repeat to you the many observations I have had the honor to make to you upon various occasions on occurrences of this kind; and I therefore limit myself to asking of you to communicate this case to the President, who, I ought to expect, will take such measures as he may think best adapted to the correction of this disorder, and for doing justice to the aggrieved party.

I renew, &c.,

(Signed) LUIS DE ONIS.

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[104] *No. 8.

Don Luis de Onis to Mr. Monroe.

[Translation.]

WASHINGTON, *February* 22, 1817.

In confirmation of what I had the honor to state in my note to you of the 12th instant, I now inclose a list of the articles which Mr. Henry Didier, a merchant of Baltimore, has landed there, under the usual forms of the custom-house, from on board the American schooner Re-

mittance, Captain James Rogers, from Aux Cayes, they being the same which had been plundered from the Spanish ship Ciencia, by the privateer Potosi, Captain James Chase, by whom they were transshipped on board the said schooner, and consigned to the above-mentioned Didier.

In consideration of these proofs I trust that you will be pleased to obtain from the President the necessary order to effect the delivery or security of this property, for the benefit of its lawful owners, and that you will have the goodness to advise me of the same for my government.

I renew, &c.,
(Signed) LUIS DE ONIS.

No. 9.

Don Luis de Onis to Mr. Monroe.

[Translation.]

WASHINGTON, *February* 28, 1817.

SIR: The session of Congress being within two days of closing, and the Senate having not given its assent to the bill passed by the House of Representatives, for the purpose of putting a stop to the armaments making in different parts of the Union, in violation of the laws of nations and of the treaty existing between His Catholic Majesty and this republic, I have considered it my duty to represent to you the injuries resulting from this delay to Spain, and likewise to all the nations of Europe, to the end that, if the President sees fit, he may be pleased to cause this subject to be taken into serious consideration.

I renew, &c.,
(Signed) LUIS DE ONIS.

No. 10.

Don Luis de Onis to Mr. Monroe.

[Translation.]

WASHINGTON, *March* 14, 1817.

SIR: In an official letter, under date of the 11th of last month, which I had the honor to direct to the Secretary of State, I represented to this Government that, contrary to my expectation, I had just received positive information that the marshal at Baltimore had left at liberty the captain and crew of the pirate Mongore, and had even permitted her to go to sea to renew her excesses, without having even so much as taken their declarations, which the public vengeance and the interests of both governments demanded. I dwelt on the great injuries which would follow to my nation, from the impunity and toleration which these highway robbers met with in this country; and requested that the President would give the correspondent directions for preventing this injury.

In my official letter of the 12th of the same month, I took occasion again to call the attention of this Government to the same subject, though in a different case, in consequence of having received advice

that Captain John Chase, who commanded the privateer Potosi, (*alias* the Spartan of Baltimore,) and more than thirty persons belonging to her crew, had arrived at Baltimore, of whom four had given very detailed declarations respecting the capture of the Spanish vessel, the Ciencia, of her halting-place, and of the existence in Baltimore, in the possession of Mr. Henry Didier, of plunder to the amount of more than $20,000; and requested that the Government would interpose its authority to give effect to the prosecution which the consul of His Majesty had set on foot against the person of Chase; and to the legal proceeding under which he has succeeded in attaching, in the hands of Mr. Didier, the said interests; and under date of the 22d of same month I inclosed a list of these effects, which were in the hands of Mr. Didier.

I have not as yet had the honor to receive an answer to any of the above-mentioned notes; and I have just understood that the authorities at Baltimore, contemning the evidence of the four witnesses who had presented themselves, and the entry in the custom-house, in the name of Didier, of the effects robbed from the Spaniards, have permitted the said Captain Chase to go very tranquilly to Norfolk, to enjoy the fruits of his depredation: that, with universal scandal, and notwithstanding the character of Captain Barnes as a pirate was established by the decision of the court of the United States in Boston, which had declared as illegitimate his prize, the Spanish schooner Pastora, and ordered that she should be restored to her owners, he had sailed from Baltimore, with his privateer, Mongore, as soon as the ice permitted, and gone down the bay to go to sea, to repeat his cruelties; without its having been possible for the consul of the King to get the declaration of Barnes and his people taken as to what had been the lot of the crews of the Spanish vessels which they had captured; declarations which, not only by the laws of nations, but by the more sacred law of humanity, should have been taken, considering the vehement and well-founded suspicions there were that they had assassinated all the individuals who had had the misfortune to fall into their hands.

[105] *In consideration, then, of the excesses committed against the subjects of the King, my master, and of those which, from the impunity and toleration on the part of the authorities of this country, are in a state to be repeated, with vessels purchased, armed, manned, and equipped in the ports of these States, contrary to all the laws of nations, to the express stipulations of the treaty which exists between the two countries, and to the laws of humanity itself, I cannot do less, in discharge of my obligation, than to represent and reclaim, in the name of my sovereign, the damages and injuries which have resulted and may hereafter result to his subjects, and to protest against the authors of all of them. At the same time I cannot omit to beg you, with earnestness, to be pleased to inform me of the measures which this Government may have taken, for the purpose of having restored to the Spanish owners the effects of which they have been robbed, and also to ascertain the fate of the unfortunate crews of the Spanish vessels which have been captured and destroyed by the two pirates above mentioned, as likewise by the other two, called the Orb and the Romp, that were, in like manner, armed in Baltimore.

I hope you will have the goodness to give me the information I ask, that I may bring it to the knowledge of the King, my master.

I renew, &c.,

(Signed) LUIS DE ONIS.

No. 11.

Don Luis de Onis to Mr. Rush.

[Translation.]

WASHINGTON, *March* 15, 1817.

SIR: I had the honor to receive your note of the 13th instant, in which, by order of the President, you inclose a copy of the act passed by Congress on the 3d, entitled "An act more effectually to preserve the neutral relations of the United States," by which the President trusts that my government will perceive a new proof, on the part of the United States, of a desire to cultivate just and friendly dispositions toward Spain.

I cannot but be highly gratified by all those occasions on which the Government of these States manifests a disposition corresponding with that entertained by the King, my master, to maintain and strengthen the amicable relations subsisting between the two nations; and I therefore hope that the President will cause the most effectual measures to be taken to enforce an observance of this law by the officers of this Government, with greater exactness than has hitherto been paid to the existing laws, and to the express stipulations of the present treaty between the two nations.

I shall embrace the first opportunity to transmit a copy of this act to my court, for the information of my sovereign; and with renewed assurances, &c.,

(Signed) LUIS DE ONIS.

No. 12.

Don Luis de Onis to Mr. Rush.

[Translation.]

WASHINGTON, *March* 26, 1817.

SIR: I have just been informed that there have entered at Norfolk two pirates, under the flag of Buenos Ayres, the principal of which is called the Independencia del Sud, armed with sixteen guns, and 150 men; her captain is the well-known pirate called Commodore Chaytor. The second is the schooner Romp, which, to enter into that port, has changed her name to that of Atrevida; she has a crew of seventy men, and appeared to be commanded by a person called Grinnolds. Both vessels were built and fitted out at Baltimore, belong to citizens of that place, and others in this republic, and their crews and captains are of the same. Their entrance into Norfolk has been public, to revictual, and return to their cruise against the subjects of the King, my master; but their principal object is to place in safety the fruits of their piracies, which must be of great importance, if we attend to the information from Havana, which states that they have robbed a single Spanish vessel coming from Vera Cruz, of $90,000; and to the fact that on the 21st of the present month they had deposited $60,000 in the Bank of Norfolk, had landed a number of packages of cochineal, and had declared that they had taken to the amount of $290,000. I am informed that the person called Commodore Chaytor was about to set out for Baltimore,

probably to settle accounts, and divide his robberies with the persons interested in the outfit. It is a circumstance worthy of remark, that these two pirates saluted the fort at Norfolk, and that it returned the salute upon the same terms as would have been done with a vessel of war of my sovereign, or of any other nation acknowledged by all independent powers.

It would be superfluous to take up much time in representing to you how sensible my sovereign and likewise all maritime nations must be to see that their flags are treated on an equality with pirates in the territory of this Union. So obvious a reflection cannot be withheld from your knowledge and that of the President. I therefore do not doubt that if, as I persuade myself there has been, a mistake in the honors paid to these pirates, you will be pleased to disapprove of the conduct of the commander of the fort, and give suitable orders to prevent its happening in future.

At the same time that I expect this measure from the justice of the President, I claim, in the name of the King, my master, that all steps be taken for the arrest of these pirates, whether they be at Norfolk, or that they repair, as is probable, to Baltimore, where their principal associates are; that they be proceeded against according to the act of Congress of the 3d instant, and to the stipulations *of the treaty
[106] between His Majesty and this Republic; that legal means be taken to ascertain all the captures made by them during their cruise, the fate of the Spanish crews that have fallen into their hands, and the places of deposit of the property taken from on board them, in order that by attaching the same by the competent tribunals, it may be held for the disposal of the owners who may prove their property.

This request being, moreover, founded in justice, is supported by the friendly sentiments of this Government toward His Catholic Majesty, by the assurances which the President has given to me of his sincere desire to put an end to a piracy which, although in opposition to the sentiments of the administration, highly compromits the dignity and character of a people distinguished for its rectitude, morality, and its refined virtue. I therefore cannot but confidently hope that you will enable me to inform my government of the measures which may be taken in this matter.

I renew, &c.,

(Signed) LUIS DE ONIS.

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*No. 13.

Don Luis de Onis to Mr. Rush.

[Translation.]

WASHINGTON, *March* 26, 1817.

SIR: The pirate Orb, fitted out at Baltimore, under the name of the Congress, and flag of Buenos Ayres, commanded by Joseph Almeida, a Portuguese, and a citizen of this republic, has had the audacity to return and enter the said port, there to deposit a part of his robberies. The piratical character of this vessel is as fully acknowledged, as it is proved that she was armed and manned with people of this country, and of others in the above-mentioned port, and that she had made different prizes in the neighborhood of Cadiz and other points; since there now

is in the port of New York the Spanish polacre, the Leona, captured by her, whose cargo, consisting of $200,000, is concealed where it is not known; and in the same port of Baltimore there are deposited the proceeds of the Spanish brig Sereno and her cargo, captured by the same vessel. No evidence can, in my judgment, be offered which gives greater certainty to facts so notorious. If by chance anything could be added thereto, it would be the acknowledgment of their atrocities. Nevertheless, I have the mortification to say, that neither this notoriety nor the reclamations of His Majesty's consul at that port have as yet been sufficient to produce those steps which are required by humanity to secure the person of this notorious pirate, to take the declarations of the crew, and to prevent their enjoying their plunder to the prejudice of the lawful owners.

I think it my duty to bring this incident to your knowledge, and I doubt not that the President, when informed thereof by you, will take it into the serious consideration which it merits, and give the most positive orders that a suit be instituted against this pirate, that an attachment be laid on all his property and funds wheresoever they may be placed throughout this republic; and that they be held at the disposal of those owners who may prove their property.

As I propose to dispatch a messenger in a few days to my government, and it will be very agreeable to me to give to His Majesty an assurance that the United States are seriously disposed to put an end to the injuries resulting to Spain from the non-observance of the treaty between the two nations, I will thank you to inform me, as speedily as possible, of the measures which may be taken in this case, and in that on which I address you in a separate dispatch.

I renew, &c.,

(Signed) LUIS DE ONIS.

No. 14.

Mr. Rush to Don Luis de Onis.

DEPARTMENT OF STATE;
Washington, March 28, 1817.

SIR: I have had the honor to receive your two notes, dated the 26th of this month, stating that you have been informed that two armed vessels, which have been committing unauthorized depredations upon the commerce of Spain, have recently arrived at Norfolk, and that a third, liable to the same charge, has arrived at Baltimore, thus bringing themselves within the reach of those laws against which, in the above and in other ways, it is alleged they have offended.

Conformably to the constant desire of this Government to vindicate the authority of its laws and the faith of its treaties, I have lost no time in writing to the proper officers, both at Norfolk and Baltimore, in order that full inquiry may be made into the allegations contained in your notes, and adequate redress and punishment enforced, should it appear that the laws have been infringed by any of the acts complained of.

I use the present occasion to acknowledge, also, the receipt of your note of the 14th of this month, which you did me the honor to address to me, communicating information that had reached you of other and like infractions of our laws within the port of Baltimore; in relation to which I have to state that letters were also written to the proper offi-

cers in that city, with a view to promote every fit measure of investigation and redress. Should it prove necessary I will have the honor to address you more fully at another time upon the subjects embraced in these several notes. In the mean time I venture to assure myself, that in the readiness with which they have thus far been attended
[107] to, you* will perceive a spirit of just conciliation on the part of this Government, as well as a prompt sensibility to the rights of your sovereign.

Accept, &c.,
(Signed) RICHARD RUSH.

No. 15.

Don Luis de Onis to Mr. Rush.

[Translation.]

WASHINGTON, *March* 29, 1817.

SIR: By your note of yesterday I am apprised that the President, on being informed by the notes to which you have replied, of the audacity with which the pirates armed in this country introduce into it the fruits of their robberies, has been pleased to give suitable orders to the authorities at Norfolk and Baltimore that, having ascertained the facts which I have brought to his knowledge, they should duly proceed according to law against the violators of the laws of this republic. The district attorney for the United States at Baltimore has replied to the King's consul there that he has no evidence upon which he can proceed against Captain Almeida; but if a witness should offer who will depose to the facts referred to, he will proceed to order an embargo to be laid on his vessel. I am perfectly aware that good order, the personal security of individuals, and the prevention of any violence being committed upon them, require that suits should be instituted according to the rules of court; but when a crime is notorious to all and is doubted by none, when the tranquillity and security of the State, the honor of the nation, and the respect that independent powers owe to each other are interested in putting a stop to crimes so enormous as those I have had the honor to denounce to you, it appears to me that the magistrates are authorized to collect a summary body of information, to inquire whether the public opinion is doubtful, and if there be ground to institute a suit. The collector of the customs cannot be ignorant that the three vessels which I have named to you were built and fitted out at Baltimore; that they were cleared at that custom-house as Americans; that their crews were, at their departure, composed of citizens of this Union, as were their captains; and that the effects which they have landed can only come from Spanish countries. What stronger testimony, if more is wanted, than their own declaration can be desired to proceed against these pirates?

The ship's papers, the declarations of the crews, the log-book, are all testimony which can throw light upon the truth or falsehood of the crime alleged, and make it unnecessary to trouble them until it be ascertained that there is ground for proceeding judicially against them.

It must have been known to you, sir, that, when the rebel Mina had armed and equipped at Baltimore for the purpose of attacking the dominions of the King, His Majesty's consul presented two declarations

sworn to by two officers who had accompanied him, setting forth all the plans and projects of this traitor, and the manner in which he had violated the laws of the republic; and that, on another occasion, the same consul presented the declarations, on oath, of four sailors of the pirate Potosi, stating the prizes they had made, the merchants to whom were addressed the effects stolen from the vassals of the King; and that in both cases they were considered insufficient to proceed against these highway robbers, and to afford the vassals of His Catholic Majesty that protection which they had a right to expect of a friendly power.

At this very moment I have received advice from His Majesty's consul at Norfolk, stating that a quantity of seroons of cochineal, indigo, and Jesuit's bark, brought in by the two privateers, the Independencia del Sud, Captain Chaytor, and the Atrevida, *alias* Romp, Captain Grinnolds, has been shipped at that port on board the packet which sailed on the 23d instant for New York, in order that, by changing place and appearing to be cleared out by other merchants, the vassals of His Majesty may be deprived of their property, and the pirates and merchants who have fitted them out become the owners of the booty. No one renders more justice to the rectitude of the President than I do, and to the sincere desire that he has to put a stop to the practices so contrary to the virtue and good faith which characterize this republic; but it is that very cause which lays me under the necessity of exposing these practices, with an entire confidence that the President will only see in this communication my anxious desire to prevent any obstacles being thrown in the way of the friendly arrangement now pending between the two powers. The treaty of limits and navigation existing between them establishes, in the most positive manner, that the two nations have agreed to consider as pirates all vessels fitted out in the two countries, respectively, manned and commanded by their respective subjects or citizens, acting in a hostile manner against one or the other of the two contracting parties under a foreign commission: The acts of Congress of the 5th of June, 1794, of the 14th of June, 1797, and the second section of that of the 30th of April, 1790, prescribe the punishment to be inflicted on these persons, and the steps to be taken on both sides to restore the property to its lawful owners.

I rely on your justice and friendly sentiments toward my government for promoting, with the President, such orders as in his wisdom and foresight will seem to him best adapted to prevent the evasion of the laws and the sacrifice of that portion of His Catholic Majesty's subjects who have been robbed by these pirates.

I renew, &c.,

(Signed) LUIS DE ONIS.

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[108] *No. 16.

Don Luis de Onis to Mr. Rush.

[Translation.]

WASHINGTON, *April* 4, 1817.

SIR: Although I have always made it a duty not to intrude on the attention of this Government by remonstrances which are not founded on incontestible facts, or, at least, on moral evidence, yet it appeared to me, in the conference which I had with you yesterday, that you were not satisfied with the complaints I lately addressed to you against the

pirates Potosi, Mongore, Congreso, Independencia del Sud, and Atrevida. I have now the honor to annex a copy of a letter from the owners of the Spanish ship Nuestra Señora de los Dolores, and of one from the consignee at Havana, by which you will be informed that the said vessel was captured near to Cadiz by the pirate Independencia del Sud, Captain James Chaytor.

I also inclose to you the declaration, on oath, of Joseph Ojeda, captain of the Spanish schooner Catalina, captured by the pirate Almeida, commanding the Orb, *alias* the Congreso. By this declaration you will see the number of Spanish vessels he has plundered, those he has burned, and those he has sent to other ports. I flatter myself that you will find in these documents, if not all the evidence required by the laws of the United States for the punishment of a man who has committed so many atrocious acts, at least sufficient to justify the detention, for the benefit of the lawful owners, of the property which he is endeavoring to introduce clandestinely into this country, in violation of the treaty of friendship, limits, and navigation now existing between the two powers.

I hope, sir, that you will allow me to use the term "pirates" in speaking of these banditti. My impression is (and I found it upon the treaty of amity I have just referred to) that every vessel built or fitted out within the jurisdiction of this republic, manned and commanded by citizens of the Union, which is navigated and commits hostilities under a foreign flag, is, and must be, deemed a pirate; that, as such, it is liable to confiscation, with all the property on board, that it may be afterward restored to the lawful owners, although no one should present themselves to make the claim in their behalf, as would be done in the case of any known murderer, or of one against whom there existed strong suspicions of having committed a crime against society, and this for the purpose of satisfying the calls of public vengeance. I hope that you will have the goodness to inform me if I am mistaken in this conception, and, in case it should be that of the President, that you would be pleased to obtain such measures of him as, in his wisdom, he may deem most proper to prevent the vessels above mentioned, together with their captains, again putting to sea, and to afford that protection to His Majesty's subjects which they have a right to expect from the close friendship existing between the two governments, by laying an attachment on the property on board those vessels, that it may be delivered up when its owners are ascertained.

I renew, &c.,
(Signed) LUIS DE ONIS.

[Inclosure 1 in No. 16.]

Don F. de Maura to Mr. Stoughton.

[Translation.]

HAVANA, *December* 17, 1816.

SIR: I am again obliged to trouble you by requesting you would be on the watch if the ship called the Nuestra Señora de los Dolores, *alias* the Primera, should put into any port in the United States, which vessel I dispatched for Cadiz on the 10th of July, under the command of Captain Nicholas Larrea, with a cargo of sugar consigned to the owner, Don Juan Francisco de Vergara, of the same place, who, under date of the 3d of September, informs me of her capture on the 27th of August, near Cape St. Vincent, by the privateer Independencia del Sud, Captain James Chaytor, and gives me authority to claim or ransom her, as you will see by a copy of his letter inclosed. I therefore hope you will do me the favor to advise me of whatever may turn up in the affair, that the requisite orders may be promptly given.

I am, &c.,
(Signed) FRANCO DE PAULO DE MAURA.

[Inclosure 2 in No. 16.]

Don Juan de Vergara to Don F. de Maura.

[Translation.]

CADIZ, *September* 3, 1816.

SIR: On the 27th of August last, at a distance of twenty-two leagues from Cape St. Vincent, the ship Nuestra Señora de los Dolores, *alias* Primera, Captain Nicholas Larrea, which sailed on the 10th of July of the present year, was captured by the insurgent schooner-brig, of Buenos Ayres, called the "Independencia del Sud," commanded by James Chaytor. On being captured Captain Larrea endeavored to ransom his vessel and cargo, and the commander of the privateer actually agreed to estimate the sale at $50,000, including therein $5,000 for the vessel, the ransom to be paid in Cadiz. When they were on the point of drawing up the necessary writings, the brig Golondrina, from Cumana, appeared in sight, which, being likewise made prize of, she was afterward liberated to carry to Cadiz the crew of the Primera, and on that account the ransom was not carried into effect. As it appears, by information, that the privateer [109] which captured her was fitted out *in North America and commissioned by the insurgent government of Buenos Ayres, she will be purchased for little or nothing. I understand that she will be ordered to the cayes of St. Louis, St. Thomas, St. Bartholomew, North America, Jamaica, or some other English port. It will, therefore, be for my interest and that of your brother, Don Pascal, &c.

(Signed) JUAN FSCO. DE VERGARA.

[Inclosure 3 in No. 16.]

Deposition of the captain of the Spanish schooner Nueva Catalina.

APRIL 1, 1817.

BALTIMORE COUNTY, *State of Maryland, to wit:*

Be it remembered that, on the 1st day of April, 1817, personally appeared before me Daniel Rogers, notary public for this State, Diego José Ojeda, and, being first duly sworn according to law, deposed as follows: That he was captain of a Spanish schooner, called the Nueva Catalina; that he was taken in the said schooner, on the coast of Cuba, by a privateer called the Congreso de Buenos Ayres, commanded by Joseph Almeyda, and in the night of the same day, the 9th of February last, his said schooner was taken by the Spanish brig-of-war Campedor, and immediately afterward taken again by the same privateer, when, having taken out all the provisions and best part of the sails, fire was put to the said schooner Catalina, and her crew put on board an American schooner, with the exception of the captain, the second mate, the cook, and two passengers, whom Captain Almeyda said he would not liberate until the same had been done with one of his officers and five men, who had been taken prisoners there; during the deponent's stay on board of Almeyda's privateer, he took the schooner Ardilla, from Omsa, with a cargo of sarsaparilla and $2,000, which sum was taken out and the schooner burned.

On the 19th of February he captured two brigs, the San Antonio Abad, from Vera Cruz for the Havana, in ballast, and having some money on board; this vessel was also burned. The other brig, San José, from Havana to Campeche, with a cargo of brandy, wine, and other goods, was completely plundered, and the prisoners of the Ardilla, and San Antonio, with the two passengers of the Catalina, were put on board of her, keeping a man of each vessel on board of the privateer; the San José was then allowed to proceed to Campeche.

On the 24th he captured the Paz, bound from Sisal to Havana, on board of which vessel a prizemaster and eight sailors were sent, as also the mate of the Catalina. She was then dispatched for Galveston. Her crew were put on shore at about eleven leagues from the port of Sisal; and this deponent further states that Almeyda made sail for this place, where the said deponent was not allowed to land until the 28th of March last, when he was sent on shore without any of the papers of his vessel, Almeyda having taken possession of them.

(Signed) DIEGO OJEDA.

In testimony whereof the said deponent hath hereunto subscribed his name, and I, the said notary, have hereunto set my hand and affixed my notarial seal, the day and year hereinbefore written.

[L. S.] DANIEL ROGERS,
Notary Public.

No. 17.

Don Luis de Onis to Mr. Rush.

[Translation.]

WASHINGTON, *April* 5, 1817.

SIR: As nothing can be more flattering to me than to prove to you that all my reclamations bear the stamp of the most scrupulous exactness and truth, I have the honor to inclose the declaration, on oath, of two seamen of the Spanish brig San Antonio de Padua, captured by the pirate Almeyda, by which you will see that this pirate has not confined himself to taking and burning Spanish vessels, but has also detained and robbed an English vessel upon the high seas.

I hope that you will have the goodness to bring the said document to the knowledge of the President, as a corroboration and support to the reclamations which I have addressed to you, in order that the property plundered by that pirate, and by the Potosi, Independencia del Sud, Mongore, and Atrevida, may be secured for the subjects of the King, my master, and that they may not be permitted to return to sea to continue their depredations.

I renew, &c.,

(Signed) LUIS DE ONIS.

[Inclosure in No. 17.]

Deposition of two seamen of the Spanish schooner San Antonio de Padua.

APRIL 4, 1817.

BALTIMORE COUNTY, *State of Maryland, to wit:*

Be it remembered that, on the 4th day of April, in the year of our Lord 1817, personally appeared before me, a justice of the peace of the said county, Lewis Falcone and Barnard Falcone, Italians, and, being first duly sworn according to law, depose as follows:

That they belonged to the crew of the Spanish schooner San Antonio de Padua, he, the said Lewis, being gunner thereof; that having sailed from St. Jago de Cuba, [110] bound for Havana, on *or about the 28th of January last, they were chased and captured the same day by a Buenos Ayres privateer, called the Congreso, commanded by one José Almeyda, who took the deponents on board his vessel, depriving them of fifty boxes of cigars, four barrels and five bundles of Spanish tobacco, and a bag containing silk handkerchiefs; that during their stay on board Almeyda's vessel, he took seven Spanish prizes, three of which he burnt, and on or about the 15th March, near the port of Havana, he fell in with a British brig, chased her under Spanish colors, and when sufficiently near fired into her, hoisting at the same moment the Buenos Ayres flag; the brig, being armed, was defended by discharges of grape-shot nearly the whole day, but being boarded in the evening was compelled to surrender; during the whole transaction the British ensign was at her main peak, and no other flag. Her crew were taken on board the Congreso, and the vessel plundered of several valuable articles of gold and silver. She was given up and allowed to proceed: her mate received a musket-shot through the head, of which wound it was almost impossible he could recover. And these deponents further state that Almeyda, after this, proceeded to the United States, and arrived at Baltimore on or about the 28th of March last.

(Signed) LEWIS FALCONE.

his
BARNARD + FALCONE.
mark.

Sworn to and subscribed before me,

THO. W. GRIFFITH.

No. 18.

Don Luis de Onis to Mr. Rush.

[Translation.]

WASHINGTON, *April* 18, 1817.

SIR: By the information which has been transmitted to me by His Majesty's consul at Baltimore, in relation to the legal steps taken by him for the seizure of the pirate Congreso, Captain Almeyda, and the attachment of her cargo, it appears that the court of Baltimore County has declared its incompetency to take cognizance of this cause, on the plea that the Congress had not the power to alter the mode pointed out by the Constitution, in which similar causes are heard and decided in the Supreme Court of the United States; from which decision it follows that no State judge or justice of the peace has power to arrest any individual for a violation of the laws of this republic. I will not permit myself any reflection upon the forms of law which may be laid down for cases of this nature, nor upon the powers which are, or are not, within the competency of the legislature; but I cannot the less express to you my surprise that the State's attorney has not given the direction recommended by the laws to an affair which, in addition to the justice due to the subjects of His Catholic Majesty, so essentially interested the honor of the United States, by the violation of its statutes, its treaties, and its neutrality with foreign nations.

The result of all which is that the pirate Almeyda is at full liberty; that his vessel, the Congreso, is released from attachment, and that he is free to land and place in safety the fruits of his piracies; that during several weeks he has had thirty hands at work upon his vessel, sheathing her with copper, making new sails, and giving her a thorough repair; and that there is an appearance that he will profit by the first favorable wind to put to sea, and continue with greater fury his atrocities and piracies, before the suit can be instituted in the court which is now designated, if effectual measures be not taken to prevent him.

I therefore hope that you will be pleased to lay the foregoing subject before the President, and I doubt not that, animated by his desire to preserve the friendship which happily subsists between Spain and this republic, he will adopt those measures which appear to him most suitable to prevent the evasions employed to obstruct the course of justice, and burden the United States with an indemnification for injuries of such magnitude occasioned to the subjects of the King, my master, by reason of the non-observance of the treaty which exists between the two nations.

I renew, &c.,

(Signed) LUIS DE ONIS.

No. 19.

Don Luis de Onis to Mr. Rush.

[Translation.]

WASHINGTON, *April* 19, 1817.

SIR: Although I was persuaded that the act of Congress of the 3d of March, relative to the preservation of the neutrality of the United

States, in addition to the treaty of friendship, limits, and navigation, existing between Spain and this republic, and to the act of 1797, which prescribes the mode of pursuing the violators of the laws of this republic, would exempt me from again calling your attention by new reclamations to the injuries which the subjects of the King, my master, incessantly experience from the privateers armed in the ports of this Union, the annexed copies of notes, which His Majesty's consul at Norfolk has addressed to the State's attorney, and to the collector of the customs, and the answer which he has received from the latter, will show you that nothing is sufficient to put a stop to the evil of which I have so often complained to this cabinet.

By these documents you will see, notwithstanding the proofs presented by Don Antonio Argote Villalobos, that the pirates Independencia del Sud and Atrevida were both fitted out at Baltimore; that their captains, Chaytor and Grinnolds, are American citizens, as well as their crews; that both the one and the other have received commis-
[111] sions, and cruised under a foreign flag, against *the Spanish commerce; that they were then strengthening their armament, and increasing their crew; and finally, that the same collector, who acknowledges they bring no manifest (registro) of the articles they have on board, from any authority or port, known or unknown, thereby evidently proving that they were stolen on the high seas, refused to arrest this property, unquestionably stolen, to hold it at the disposal of the owners, who might prove their claims, and to detain the vessels, which in manifest violation of the laws of this republic, and above all of the act of Congress of the 3d of March, are there preparing to return to their cruise.

I shall abstain from fatiguing you further upon a subject to which I have so often claimed your attention and that of the President. I flatter myself that the transmission of the proceedings, such as they have been transmitted to me, and the elucidation afforded by the annexed copies, will be sufficient to induce the President to acknowledge the urgency of adopting measures, really effectual, at once to put an end to these piracies; otherwise His Majesty will not be able to see, in a continuance of these excesses, a confirmation of the assurances which the President has given me of his desire amicably to adjust, by means of a treaty, all the differences pending between the two governments, and to strengthen the friendly relations with His Majesty, by new arrangements, mutually advantageous to both States; nor the pledge which I have already given him, that if the above-mentioned act of the 3d of March did not repair the evils suffered by his subjects until that period, it would at least prevent those by which they were threatened in future.

I renew, &c.,

(Signed) LUIS DE ONIS.

[Inclosure 1 in No. 19.]

Don Antonio Villalobos to Mr. Mallory.

[Translation.]

SPANISH CONSUL'S OFFICE, *April* 10, 1817.

SIR: I found it my duty, on a former occasion, to make an official application to you, in the case of the armed schooner Potosi, Captain Chase, said to be acting under a commission from the pretended government of Buenos Ayres, (where, by the by, she had never been,) but which had been fitted out, armed, and equipped in the port of Baltimore, to cruise against the subjects of Spain, contrary to the law of nations, and in violation of the neutrality of the United States, their laws, and stipulations in the

existing treaty between the two nations, concluded on the 27th October, 1795, and in opposition to the intentions of the government, manifested in the President's proclamation of the 1st September, 1815, and since more fully displayed by the act of Congress passed on the 3d March ultimo, entitled "An act more effectually to maintain the neutral relations of the United States."

I do not doubt, sir, but that you participate in the indignation which every honest man feels at the lawless proceedings, the greedy rapacity, and, in many instances, the horrible cruelties of this set of sea depredators, who being for the most part citizens of the United States, are a disgrace to this country; but still you did not think yourself authorized to interfere, though in your reply, dated the 16th of December ultimo, you expressed that you would take care in that, as in other cases, to see that the laws in the United States, and other regulations of the Government, are duly observed.

Impelled again by duty, and relying on the assurance (just quoted) in your said letter of the 16th December ultimo, I do myself the honor of addressing you the present letter, to request you to interpose your authority for the purpose of detaining the armed brig Independencia del Sud, *alias* the Mammoth, commanded by James Chaytor, and the schooner Atrevida, *alias* the "Romp," Captain Grinnolds, both which vessels have been armed and equipped in this country, in violation of the law of nations, the neutrality laws, explicit stipulations, and professed intentions of the Government of the United States, and are commanded and principally manned by citizens thereof.

As these violators of all law pretend to shield their conduct under a commission from a government the existence of which is not acknowledged by this or any other civilized country, it becomes necessary for me to call your attention to Article XIV of the treaty existing between Spain and this country, by which you will find that it is expressly forbidden to the citizens and subjects of either nation, respectively, to take any commission from any prince or State with which the other nation shall be at war; and such as shall take such a commission are punishable as pirates. Upon the strength of this article, and in vindication of the laws and honor of the United States, I must solicit you to put a stop to the further proceedings of these freebooters, and to deter them from going on in their criminal course, to the great detriment of the commerce of Spain, a nation in amity with this country, and to the annoyance of the peaceable commercial subjects of all other nations. I must further solicit you to stop these vessels, on the ground that they have in this port improved their equipment and considerably augmented their crews, by enlisting several individuals, contrary to the said act of Congress of the 3d of March ultimo, which enlistment is the more aggravating because most of the individuals so enlisted are known to be citizens of this country. I also solicit you to stop and keep in your possession certain stolen goods, namely, cochineal and indigo, which I am told are now in the custody of the custom-house under your direction, reserving to myself to prove hereafter the true owners of this property. I must add the request to be furnished with a copy of the entry or manifest of the goods or articles of merchandise imported by, and landed at this port, from the said cruisers.

In closing this letter, I cannot forbear expressing a hope that you will give to this application all the attention which the nature of the case requires, and that you will not delay your answer, from the tenor of which I shall regulate my conduct, so as to acquit myself of that duty to my King and country imposed upon me as well by my office as by my personal feelings.

I remain, &c.,

(Signed) ANTONIO ARGOTE VILLALOBOS.

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[112] *[Inclosure 2 in No. 19.]

Don Antonio Villalobos to Mr. W. Wirt.

[Translation.]

SPANISH CONSUL'S OFFICE, *Norfolk, April* 10, 1817.

SIR: The inclosed is a copy of an official letter which I have addressed this day to the colector of the customs of this port.

As there is no question but that the Government of the United States are bound to punish such of their citizens as, in defiance of all law, have committed hostilities against a friendly nation, and also to arrest them in their progress, when they are seen within their jurisdiction preparing to continue their nefarious course; and as it is in your province, as district attorney, to see that the laws of the Union are duly enforced, both in the punishment of crimes and in the prevention of them, I make the same application to you that I have made to the collector, requesting you, in the name of my government and the suffering subjects of Spain, to issue such process as will deter James Chaytor and Captain Grinnolds, their officers and crews, mostly American citizens,

from going out of this port to renew their depredations on Spanish commerce: at the same time I leave to your discretion to institute any further proceedings that the nature of the offenses already committed may admit of, and of which I shall furnish proofs in due time. I must also request you to secure, in behalf of the true owners of the stolen property which can be come at, namely, a parcel of cochineal and indigo, landed by these privateers-men at this port, and said to be now in the custody of the custom-house.

I hope, sir, that you will see the propriety of my applying to you in the present instance, and that you will do me the favor to answer this letter, apprising me of the course you mean to adopt for my information, and to enable me to give proper intelligence to my minister.

I remain, &c.
(Signed) ANTONIO ARGOTE VILLALOBOS.

[Inclosure 3 in No. 19.]

Mr. Mallory to Don Antonio Villalobos.

COLLECTOR'S OFFICE, *Norfolk, April* 11, 1817.

SIR: I had the honor to receive your note of yesterday, in relation to the two armed vessels, now lying in this port, under the flag of the government styling itself "the United Provinces of the River Plate," the one called Independencia del Sud, and the other Atrevida. You require me to detain these vessels upon the grounds that, in violation of the law of nations, the neutrality laws, explicit stipulations, and professed intentions of the Government of the United States, they have been armed and equipped "in this country, and are commanded and principally manned by citizens thereof;" that under Article XIV of the treaty between Spain and this country they are pirates, and that in violation of the act of Congress of the 3d March last, "more effectually to preserve the neutral relations of the United States," "they have in this port improved their equipment, and considerably augmented their crew, by enlisting several individuals." In reply to which I conceive it proper only to remark, that these vessels have not been unnoticed by me, and that in my conduct toward them I shall endeavor, as I have done, to observe that course which my official duties appear to me to have prescribed. In pursuing which, that I may have the aid of every light to guide me which facts can afford, and as the allegations thus made by you, in an official form, must be presumed to be bottomed on positive facts which have come to your knowledge, you will have the goodness, I trust, to furnish me, with as little delay as possible, with the evidence of their existence in your possession.

In respect to the merchandise landed from these vessels, and deposited in the public store, which you request me to retain in my custody, for proofs to be obtained by you as to the owners of it, I have to observe that the circumstances of the case, as far as they are at present known to me, do not seem to require that I should take upon myself the responsibility. On the contrary, that these goods should be regarded as the property of those who deposited them, subject to be delivered to them, on complying with all the requisites of the laws for the protection of the public revenue.

There was no regular manifest or entry of these articles, or a copy of it should be furnished to you, according to request, but simply a memorandum of them, and a receipt of the keeper of the public store, from which it appears that there were ninety-two bales or packages of cochineal, jalap, and vanilla, consisting chiefly of the first-mentioned article.

I am, &c.,
(Signed) CHARLES K. MALLORY.

[Inclosure 4 in No. 19.]

Don Antonio Villalobos to Mr. Mallory.

[Translation.]

SPANISH CONSUL'S OFFICE, *Norfolk, April* 12, 1817.

SIR: I have had the honor to acknowledge the receipt of your letter of yesterday, in answer to mine of the day before, soliciting you to detain the privateers Independencia del Sud and Atrevida, on the grounds that those vessels have been origin-
[113] ally armed and equipped in this country, and are now *commanded and principally manned by citizens of the United States, and because they have in this port improved their equipment and augmented their crews by enlistment; and fur-

ther, soliciting you to retain in your possession, and not to re-deliver to those privateers-men certain articles of stolen goods now under your custody; in reply to which you are pleased to observe that those vessels have not been unnoticed by you, and that you shall endeavor to observe, with regard to them, that course which you think your official duties prescribe to you; requesting me, at the same time, to furnish the evidence to prove the facts that I have set forth, in order that you may have the aid of every light to guide you; and finally, you observe, that from the circumstances of the case you do not think you ought to take upon yourself to retain possession of the property above mentioned, of which you give a description in general terms.

With regard to the evidence you require I will not hesitate to say, that as the facts I have stated are matters of public notoriety, known to everybody, and I had no reason to suppose that you were ignorant of them, I did not deem it incumbent upon me to add any proof to the simple narration of them; and I was confident, that by going on to point out to you the stipulations and laws which are infringed in consequence of those facts, you would think yourself authorized to interfere in the manner requested.

I will assert, sir, as a known fact, that the brig now called Independencia del Sud, is the same vessel which was formerly known under the name of the Mammoth privateer, belonging to Baltimore, armed and equipped in that port, from which she sailed under the command of the same James Chaytor who still commands her; that the very same James Chaytor was necessarily then, and cannot have ceased since to be, a citizen of the United States, is settled and has a family in Baltimore, whence his wife came down a few days ago in the packet Walter Gray, and is now in this town, on a visit to her husband; that he has enlisted men in this port, many of whom are not so obscure as not to be generally known. I will mention, as an example, Mr. Young, of Portsmouth, who is now acting as first lieutenant on board the said brig. I will assert as a fact that the Atrevida is the very schooner known before under the name of the Romp, the same that underwent a trial for piracy before the Federal court in this State; that her present commander, Captain Grinnolds, is a native of one of the neighboring towns, and very well known in this place; and finally, that this vessel has been at one of the wharves altering her copper, which I call an improvement in her equipment.

If these public facts, falling within the knowledge of every individual, require more proof than the public notoriety of them, I must request to be informed as to the nature of that proof, and also whether you are not warranted to act upon just grounds of suspicion without that positive evidence which is only necessary before a court of justice.

Respecting the property which I have solicited you to stop, as you seem not to think yourself authorized so to do, I must observe to you, that by the law and general practice in this and other countries, property in suspicious hands is frequently stopped; and I will go further and assert, that there is no doubt of the goods in question being stolen goods, or what, by way of softening the expression, are called prize goods, and all such property hitherto brought into this country by this sort of cruisers has been adjudged by the Federal courts stolen property, and has been ordered to be restored to the rightful owners. I do, therefore, most solemnly lay claim to this property, in behalf of the lawful owners, who, I am confident, will, at no distant period, come forward themselves to demand it; and I will hereby reserve to them their rights unimpaired, to sue and recover from whomsoever they may be entitled to claim under the law of nations, and in conformity to Articles VI and IX of the treaty between Spain and this country, concluded on the 27th of October, 1795, and under any other law that may make in their favor.

I will now conclude by expressing a hope that, upon a thorough view of the subject, you will consider it consistent with the duties of your office to accede to my solicitation for the relief of the injured subjects of Spain, and to prevent a number of bad citizens of this country from committing further depredations on their commerce.

I remain, &c.,

(Signed) ANTONIO ARGOTE VILLALOBOS.

[Inclosure 5 in No. 19.]

Mr. Mallory to Don Antonio Villalobos.

COLLECTOR'S OFFICE, *Norfolk, April* 14, 1817.

SIR: I have had the honor to receive your letter of the 12th instant, and have bestowed upon it all the attention which the limited time allowed me would admit of.

From the view I have taken of the facts, as now stated by you, which it is to be presumed are to be regarded as specifications under the more general charges set forth in your letter of the 10th instant, I must really confess I do not at present see grounds sufficient to justify the steps you require me to take against the armed vessels now in this

port, and the merchandise which has been permitted to be landed from them and deposited in the public store.

You assert as known facts that the brig now called the Independencia del Sud is the same vessel that was formerly known under the name of the Mammoth privateer, belonging to Baltimore, armed and equipped in that port, from which she sailed under the command of the same James Chaytor who still commands her. That this very same James Chaytor was necessarily then, and cannot have ceased since to be, a citizen of the United States; is settled and has a family in Baltimore, whence his wife came down a few days ago in the packet Walter Gray, and is now in this town on a visit to her husband. That he has enlisted men in this port, many of whom are not so obscure as not to be generally known, and you mentioned as an instance, Mr. Young, of
[114] Portsmouth, who you allege is now acting as first lieutenant on board the brig.

You further assert as a fact, that the Atrevida is the very same schooner which was known under the name of the Romp, the same that underwent a trial for piracy before the Federal court in this State; that her commander, Captain Grinnolds, is a native of one of the neighboring towns, and is very well known in this place. And finally, that this vessel has been at one of the wharves altering her copper, which you call an improvement in her equipment.

Now, sir, suppose these facts to be what you affirm they are, matter of too great public notoriety to require anything like demonstration, do they prove so clearly that the brig now called the Independencia del Sud, was originally fitted out in this country to aid the United Provinces of the River Plate in their struggle for independence? that James Chaytor, a citizen of the United States, assumed the command of her with that intention, under a commission from that Government in the port of Baltimore, and that he commenced his cruise against the vessels of the subjects of His Catholic Majesty, with whom the United States are in amity, from that port? On the contrary, do they not with equal or greater certainty tend to show that this brig, which you acknowledge was formerly the Mammoth privateer, belonging to Baltimore, was fitted out during the late war between this country and Great Britain, to cruise against the vessels of the subjects of His Britannic Majesty? That she was then under the command of, and probably owned in whole or in part by, the said James Chaytor; that on the termination of that war the owners of the said vessel, having a right to dispose of her wheresoever and to whomsoever they thought fit, may have sent her under the command of the said James Chaytor from Baltimore to Buenos Ayres, where she may have been purchased by the government of that place and put upon their naval establishment, and that the said James Chaytor might then and there have accepted the commission, appointing him to the command of her? I wish not to be understood as contending that this was the case, but that it is an inference which may be fairly deduced from the facts as specified by you. The log-book and other documents which I have in my possession, seem, moreover, to corroborate this view of the subject. It appears from them that she is a public armed vessel, not a privateer, and commenced her cruise from Buenos Ayres under the orders of that government, be it whatever you may please to term it, in May, 1816. Whether the said James Chaytor had the right, under such circumstances, to accept the commission or not, or whether, when he sailed from Baltimore, being then a citizen of the United States, he cannot have since ceased to be one, appears to me plainly and simply the question—Has a citizen of the United States the right to expatriate himself and enter the service of a foreign power not at war with his native country? A question which it is not my province to discuss, but about which, I apprehend, there can be but little doubt in this country, whatever may be the antiquated notions prevailing upon the subject in the old governments in Europe. He having a wife in Baltimore, and her coming to see him here, does not appear to me to affect the case at all, inasmuch as nothing is more common than for foreigners to have wives here, natives of the country: an illustrious instance of which might be given.

With respect to the facts assumed by you of the enlistment of men in this port, of which you mention Mr. Young as an evidence, suffice it to say, that from intimations I had received anterior to the date of your letter, I had determined to make the proper inquiries, and to be satisfied upon this point before those vessels are permitted to sail, and shall be governed by the result; although it does not appear altogether certain that such an augmentation of their force is interdicted by the act of Congress of the 3d of March last, which, being a law highly penal in its nature, will admit of no latitude of construction. Permit me to observe, *en passant*, that Mr. Young is by birth an Englishman, served several years in the British navy, several in ours, and, I suppose, has now an equal right, provided it be not done in a manner to violate the laws of the United States, to enter into the service of the government calling itself "the United Provinces of the River Plate," or any other government that will receive him.

With respect also to the vessel called the Atrevida, asserted by you to be the very schooner formerly known by the name of the Romp, and tried for piracy, I proceed to remark, that this vessel furnishes a strong argument against you; for after a full investigation of all the charges against her, supported, I believe, as they were, by some of her own crew, she was acquitted, as well as the commander of her, Squire Fish, who

had previously been an officer in the Navy of the United States. The same remark will apply with equal force to her present commander, Captain Grinnolds.

Upon the subject of the fact lastly stated by you, of the improvement in the equipment of this vessel at one of our wharves, I have to observe, that on the arrival here of these vessels I had them examined, and an inventory of their armament, equipments, &c., taken, and before their departure I shall cause a re-survey to be made, with a view to ascertain whether they have undergone, in any respect, any alterations prohibited by the laws of the United States. I cannot agree with you, however, that a mere alteration of her copper, rendered necessary, perhaps, by some damages which, I understand, were sustained in the bottom of the vessel, can be considered as an improvement "in her equipment."

And as for the merchandise which you "most solemnly lay claim to," in behalf of those whom you term the lawful owners, which, you assert, "there is no doubt of being stolen, or what, by way of softening the expression, are called prize-goods," I can only say that I neither officially nor individually have any claim to it whatsoever. It is only deposited in the public stores for safe-keeping to guard against injury, as in other cases, which might result to the revenue of the United States; and that I see no reason from anything you have advanced to change the opinion expressed in my last upon the subject. I know of no decisions, such as you speak of, in the Federal courts, adjudging prize-goods to be "stolen property, and ordering it to be restored to the rightful owners." If there be any such decisions, they go only to show that it is by such authority only, and not by any that I possess, that the articles in question can be detained or restored.

Having thus, sir, gone through the different topics presented by you for my consideration, I shall conclude by assuring you it did not require anything you have
[115] pointed out to me to remind me *of any duty which the circumstances of this case have rendered or may render it incumbent on me to perform.

I am, &c.,

(Signed) CHARLES K. MALLORY.

[Inclosure 6 in No. 19.]

Don Antonio Villalobos to Mr. Mallory.

[Translation.]

SPANISH CONSUL'S OFFICE,
Norfolk, April 15, 1817.

SIR: I have received the letter which, in answer to mine of the 12th instant, you did me the honor to address to me yesterday.

Without denying any of the facts, on the strength of which I requested your interposition to prevent two armed vessels, now in this port, commanded and principally manned by citizens of the United States, from sallying forth to renew their depredations upon the commerce of Spain, you state that you do not see sufficient grounds for stopping those vessels, or the merchandise landed from them, and now on deposit in the public store-house in this place.

I do not mean to enter, on the present occasion, into a minute discussion of the several reasons you assign for the line of conduct which you think proper to pursue in this case, because I think it sufficient for me to transmit copies of my correspondence with you to my government, through the channel of the minister plenipotentiary of His Catholic Majesty in this country. Still, you will permit me to advert to that part of your argument, purporting that it is not so clearly proved that Chaytor's views, on leaving Baltimore with the armed vessel under his command, was to cruise against the subjects of Spain under a commission from the pretended government of the river Plate; upon which I will remark, that it is no longer necessary to form conjectures about the probable intentions of men, when facts and overt acts have already fully developed their evil purposes. Thus, whether James Chaytor, in going out of Baltimore with the armed vessels still under his command, had hostile views against the subjects of Spain, a nation in amity with this country, is sufficiently solved by the hostilities which he has already committed, and still intends to commit, in the same vessel, against the said subjects.

I must also be allowed to notice that part of your argument, "that whatever may be the antiquated notions prevailing upon the subject in the old governments of Europe, there is little doubt in this country about the question, whether a citizen of the United States has a right to expatriate himself and enter the service of a foreign power not at war with his native country." In this you certainly appear to me to have set up a mere speculative opinion, in opposition to a positive law, namely, the stipulations in the fourteenth article of the treaty with Spain, by which the United States have solemnly pledged themselves not to permit their citizens to accept com-

missions from any prince or state at war with Spain, for the purpose of cruising against her subjects, and to punish as pirates such of their said citizens as shall act contrary to that stipulation.

With regard to the schooner Atrevida, formerly the Romp, which vessel, you say, "furnishes a strong argument against me," because, although tried for piracy, she was not actually condemned, I cannot avoid remarking, that since the time when she escaped merited condemnation, and her commander and crew condign punishment, she has been out cruising with the armament and commission she took out from this country, (it is pretty well ascertained that she has never been at Buenos Ayres,) and that in every respect she is evidently a pirate, under the true meaning and intent of the said fourteenth article of the treaty with Spain, and that her said commander and crew are actually engaged in piratical pursuits, in which course it behooves the constituted authorities of this country to stop them, when within their jurisdiction and completely in their power.

Nor can I forbear to observe, before I dismiss the subject, that the self-styled government of the United Provinces of the River Plate will gain very little "in their struggle for independence" by commissioning such a gang of greedy freebooters, the scum of this and other countries, who, caring little for the fate of that deluded people, excite, by their voracious appetite for plunder, the indignation not only of the people of Spain, but of the honest and good of all other nations.

I will now conclude, sir, by repeating my solicitations and assertions contained in my letters of the 10th and 12th instant, and by solemnly protesting, in the name of my sovereign, against permitting a number of citizens, now within their jurisdiction, and under their control, to go out to cruise against the commerce of Spain, and to renew their hostilities against her subjects; and I do also protest against delivering back to them certain articles of merchandise described by you in general terms in your letter of the 11th instant; which articles of merchandise are obviously taken from Spanish subjects, contrary to law, and especially contrary to the fourteenth article of said treaty with Spain, and which, from the tenor of the sixth and ninth articles of the same treaty, ought to be retained in behalf of the lawful owners.

I am, &c.,

(Signed) ANTONIO ARGOTE VILLALOBOS.

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[116] *[Inclosure 7 in No. 19.]

Mr. Mallory to Don Antonio Villalobos.

COLLECTOR'S OFFICE, *Norfolk, April* 15, 1817.

SIR: I have been honored with your letter of to-day, in answer to mine of yesterday, and am perfectly pleased that our correspondence has issued in a determination on your part to transmit copies of it to your government, through its minister in this country.

I have nothing further to add on my part but the assurances of the respect with which I am, &c.,

(Signed) CHARLES K. MALLORY.

No. 20.

Mr. Rush to Don Luis de Onis.

DEPARTMENT OF STATE,
Washington, April 22, 1817.

SIR: By the direction of the President, I have the honor to ask whether you have received instructions from your government to conclude a treaty for the adjustment of all differences existing between the two nations, according to the expectation stated in your note to this Department of the 21st of February. If you have, I shall be happy to meet you for that purpose. If you have not, it is deemed improper to entertain discussions of the kind invited by your late notes. This Government, well acquainted with, and faithful to its obligations, and

respectful to the opinion of an impartial world, will continue to pursue a course in relation to the civil war between Spain and the Spanish provinces in America, imposed by the existing laws, and prescribed by a just regard to the rights and honor of the United States.

I have, &c.,
(Signed) RICHARD RUSH.

No. 21.

Don Luis de Onis to Mr. Rush.

[Translation.]

WASHINGTON, *April* 23, 1817.

SIR: I have received your letter of yesterday's date, in which you are pleased to inform me, by order of the President, that if I have received the instructions which I expected, to conclude a treaty for the arrangement of all the differences pending between the two nations, you are authorized to enter into that negotiation with me; but if not, you consider it improper to entertain discussions on the subjects treated of in my last notes.

In reply to these points, I have to inform you, with respect to the first, that my conjectures being confirmed that my instructions have been intercepted by the pirates which infest the seas, whereby their arrival is so much delayed, I have dispatched my secretary, Don Luis Noeli, in order that, by informing His Majesty of this unexpected event, he may cause them to be renewed to me. As to what relates to the second point, I refer to what I stated to you in my letter of the 21st of February, that I would entirely conform to the wishes of the President, to wait the discussion of those points until the arrival of the instructions.

In the same note you have been pleased to add, in reply to the different notes which I have addressed to you on the subject of the armament of privateers in this country for the purpose of cruising against the subjects of the King, my master, that this government, faithful to its obligations, and respectful to the opinion of the impartial world, will continue to pursue a course in relation to the civil war between Spain and the Spanish provinces in America imposed by the existing laws, and prescribed by a just regard to the rights and honor of the United States.

As all my notes have been directed to this single object, and as I have, in conformity to your intimations, given correspondent orders to His Majesty's consuls, to require of the tribunals the execution of those same laws, there is nothing left for me to do but to transmit to His Majesty this new assurance of the President, and to continue, on my part, to inform this Government of everything which may contribute to maintain unalterable the relations of friendship which exist between the two nations, until the arrival of the instructions which I have requested, and further to strengthen them by a treaty which may put an end to all pending discussions.

I have, &c.,
(Signed) LUIS DE ONIS.

No. 22.

Don Luis de Onis to Mr. Rush.

[Translation.]

PHILADELPHIA, *July* 9, 1817.

SIR: I am under the necessity of calling your attention, and that of the President, to what has occurred at Baltimore, in relation to the two privateers or pirates which have lately entered the bay of Chesapeake, and now are within the proper limits of the State of Maryland, [117] the one commanded by Captain *Taylor, and the other by Captain Stafford. It is notorious that these privateers, manned and armed in the ports of the Union, sailed on a cruise against the Spanish commerce, and have returned to the waters of Maryland with a part of the plunder and booty they have taken from Spanish and Portuguese vessels.

For the due conviction of this outrage the necessary orders or warrants were sent, at the request of the consul of his Catholic Majesty in Baltimore, to the marshal of that city, to proceed to the arrest of the aforesaid privateers, and for its execution a gun-boat was granted by the collector of the customs. All this, however, was in vain; the marshal gave no effect to the orders issued for this arrest; and His Majesty's consul seeing that eight days had passed without the marshal taking a single step to fulfill the orders he was charged with, called upon him, and claimed their execution; upon which he replied categorically, "that he was unwilling to proceed to the arrest of the said privateers, because it was not his duty to execute it except they had entered the port of Baltimore; but by no means in the bay, although within the district of the State." The consul lately applied to the district attorney, complaining of this conduct, and he acknowledged that indeed it was very extraordinary; but he took no steps to remedy it, or to enforce the observance of the laws of the United States, in a case of so scandalous an example. These facts speak for themselves, and the mere statement of them is sufficient to make you and the President thoroughly sensible of the monstrous consequences which the irregular conduct of this marshal may lead to. It is perfectly evident that the public treaty between Spain and the United States, and the late act of Congress, sanctioned as a general law for the more strict observance of the neutrality of the same States with foreign powers, are scandalously trampled under foot in Maryland; and that the marshal, by formally disobeying the lawful authority of the State, and that of the General Government of the Union, protected the hostilities and piracies carried on against the trade of a nation in a state of peace and amity with the United States. I cannot, therefore, do less than to remonstrate, in the name of the King, my master, against so manifest a violation of the neutrality of this republic, of its laws, and of the treaty existing between the two powers, and to request that you will be pleased to obtain of the President the most prompt and effectual orders to cause the marshal of Baltimore to do his duty, and all requisite justice to the subjects of His Majesty.

It is my duty also to call your attention and that of the President to the conduct of the adventurer Sir Gregor McGregor, who, since he was in arms with the bands of insurgents in the province of Venezuela, has come to these States, and been constantly engaged in enterprises to invade or disturb the tranquillity of his Catholic Majesty's possessions in that part of the world. He lately recruited in Charleston a great

number of adventurers, and among them several persons of note, viz, one Rouse, son of a colonel of that name, an inhabitant of that city; one Champion, who was a commissary in the service of the United States in the late war, and store-keeper of ordnance; one Heath, a lawyer of the same place; and many others whose names I pass over. He purchased, under a borrowed name, a brig of considerable burden, which he dispatched with passengers to New Orleans on the 19th of last month; and the following day he went on to Savannah, in the stage, according to common report, to recruit more people. His subsequent proceedings and hostile preparations in the bosom of this Union, against the possessions of the Spanish monarchy, are notorious, and are announced with a scandalous publicity in many papers of these States. I hope, then, that you and the President will apply the energy of your zeal for good order and the observance of the public laws by restraining these excesses and vexations, which compromit the neutrality which the President has proposed to preserve in the dispute subsisting between the King, my master, and some of his provinces in rebellion, and render null, as you may imagine, the security in which the government of his Catholic Majesty rests, in a reliance on the safeguard of the said laws, and on that of the general principles of public good faith, which serve as the basis of the tranquillity and friendly intercourse between the nations and governments of the world.

I renew, &c.,

(Signed) LUIS DE ONIS.

No. 23.

Don Luis de Onis to Mr. Rush.

[Translation.]

PHILADELPHIA, *September* 2, 1817.

SIR: The viceroy of New Spain informs me, in several dispatches which I have lately received, that frequent cases occur of American vessels, both merchantmen and armed ships, which, in running along the coasts of those parts of the dominions of His Catholic Majesty, enter their bays, roads, and harbors; sometimes for the purpose of exploring the country and examining the state of things there, and at others for that of assisting the rebels with provisions, arms, and warlike stores, and of landing adventurers and other dangerous persons, whose object is to join the insurgents. The viceroy states that the American Colonel Perry had joined the traitor Mina with 500 men; and Savary, the commandant of the mulattoes, with another body, having gone from New Orleans to incorporate their force with that of Mina and Aury at Galveston, a place within the Spanish dominions; that American vessels are continually sailing from New Orleans with supplies of arms, ammunition, and provisions for those banditti; that the American schooner Saeta, from New Orleans, entered the harbor of Tampico under the pretense of stress of weather, but, without any manner of doubt, for the purpose of examining the country; and that the privateer or pirate Jupiter had captured two Spanish vessels off the bar of the Mississippi very near to several American vessels, &c. The viceroy concludes by saying that he cannot possibly think that so many acts of hostility and violation of the laws of nations, and of the existing treaty,

can be permitted or tolerated by the Government of the United
[118] *States; and that being desirous to contribute on his part to the maintenance of the amicable relations subsisting between this Government and that of His Catholic Majesty, he had treated the American vessels and citizens, even in the cases of hostility and violation referred to, with unexampled kindness; but that now he left it to my zeal to endeavor to obtain of this Government effectual remedies against these excesses; that, in the mean time, he had given orders to the governors, commandants, and other officers at the most suitable places within his viceroyalty, neither to admit nor tolerate any American vessel, or those of any other foreign nation, without the requisite passport and license, and that he would exercise the rigor of the laws against those who should disturb the good order and tranquillity of the King's dominions.

In consequence, therefore, of this request of the viceroy, I add this reclamation to those which I have already had the honor to address to the President, through the medium of the Department committed to you, on similar cases, and in the name of the King, my master; and I trust that on your laying the whole before his excellency, he will cause the most effectual measures to be adopted to prevent the continuation of these excesses, and to enforce the due observance of the general principles of the laws of nations, and of the treaty which governs between Spain and the United States.

I renew, &c.,

(Signed) LUIS DE ONIS.

No. 24.

Don Luis de Onis to Mr. J. Q. Adams.

[Translation.]

PHILADELPHIA, *September* 19, 1817.

SIR: A complaint having been laid before His Catholic Majesty's government by a part of the crew of the Spanish polacre Santa Maria, captured on her passage from Havana to Cadiz, by the pirate called the Patriota Mexicano, commanded by José Guillermo Estefanos, manned with citizens of these States, and covered by their flag, under which he chased and brought to the said polacre, until, having ascertained her capture, he hoisted the insurgent flag, I have received the commands of the King, my master, to request of the President, through your medium, the most decisive measures for putting an end to the abuses practiced in the ports of this Union, by arming privateers to cruise against the Spanish trade, thus prostituting the flag of the United States by these predatory acts, and trampling under foot, with an unparalleled audacity, national rights and the existing treaty between Spain and these States.

I, therefore, now renew these urgent reclamations which, on former occasions, I have submitted to the President, through your Department, on this important point; and I trust that the numerous instances of these abuses and horrible depredations will induce his excellency to adopt energetic measures to restrain these excesses, which so deeply compromit the neutrality of the United States in the eyes of all nations,

and are wholly repugnant to the friendship and good understanding happily subsisting between them and His Catholic Majesty.

I renew, &c.,

(Signed) LUIS DE ONIS.

No. 25.

Don Luis de Onis to Mr. J. Q. Adams.

[Translation.]

PHILADELPHIA, *November* 2, 1817.

SIR: His Majesty's consul at New York has transmitted to me a copy of his correspondence with the United States attorney for that district, whereby he requests that, in conformity with the act of Congress of the 3d of March last, he would oblige a certain armed brigantine to give security, or cause her to be seized; the said vessel having arrived at that port from Norfolk, under the flag of Venezuela, and recruited men to increase her crew, in order to proceed afterward to Amelia Island, there to join the adventurer McGregor, and to co-operate in his nefarious plans against the possessions of my sovereign, and against the Spanish trade.

I have the honor to inclose a copy of the said correspondence, on the contents of which I think it entirely superfluous to make any comment; leaving it to you, sir, to decide whether the solicitude of His Catholic Majesty's consul at New York has been in conformity with the laws and the above-mentioned act of Congress, and whether the attorney for that district will rightfully have conformed thereto by his strict observance of them, in obliging the owner or captain of the said armed brigantine to give the requisite security that he shall commit no hostilities against the subjects of His Catholic Majesty, and in preventing him from proceeding freely to sea, to commit new depredations.

It is very disagreeable to me to have to repeat to you, sir, what, unfortunately, I have been several times under the necessity of submitting to the President, through the medium of your predecessors; namely, that the act of Congress of the 3d of March, 1817, has in no wise lessened the abuses by which the laws are evaded, and render entirely illusory the laudable purposes for which they were enacted. From the greater part of the ports of these States there frequently sail a considerable number of vessels with the premeditated intention of attacking the Spanish commerce, which carry their armament concealed in the hold. It rarely happens that they can be arrested, inasmuch as the collectors of the customs say that they have not at their disposition the naval force necessary to effect it; on the other hand, armed vessels, under the flag of the insurgents, enter into the ports of the
[119] *Union, and not only supply themselves with all necessaries, but also considerably increase the means they already have of destroying the trade of Spain, as has recently been the case at New York, whereby the (so-called) privateers of His Majesty's revolted provinces, which are in reality nothing more than pirates, manned by the scum of all countries, enjoy greater privileges than the vessels of independent powers.

I request you, sir, to lay particularly before the President the case which now obliges me to trouble you, in order that his excellency, being made fully acquainted therewith, may be pleased to take such measures

as are within his reach, to cause the provisions of the laws of this republic to be carefully fulfilled, to preserve the observance of the neutrality with other powers, and to prevent the infraction of the treaty existing between the two nations, and thus avoid not only the serious evils that the said pirates cause to the subjects of His Catholic Majesty, but the increase of the difficulties which the two governments are endeavoring to overcome for the purpose of establishing their relations upon a more friendly and permanent footing.

I flatter myself that you will honor me with your answer, and, reiterating my respects, I renew, &c.,

(Signed) LUIS DE ONIS.

[Inclosure 1 in No. 25.]

Mr. Stoughton to Mr. Fisk.

CONSULATE OF SPAIN.
New York, September 16, 1817.

SIR: Some days ago there arrived in the port of New York an armed brig, proceeding from Norfolk, which I have been very credibly informed is a vessel pretending to have a commission from Venezuela, but whose object in coming into this port was to procure an additional supply of men, wherewith to commit hostilities against the subjects and possessions of the King of Spain. A few days ago I presented to the collector of the port of New York an affidavit of a man named John Reilley, stating that he had been requested to enlist on board of a vessel, which was represented to him to be the private schooner Lively, bound to Amelia Island, to join General McGregor to invade the territories of his Catholic Majesty.

I am now informed that the brig above mentioned is the vessel alluded to, Reilley having either been mistaken in the name, or designedly deceived by the agents of the privateer. I now inclose the affidavit of John Finegan, by which you will perceive that the officers of the above brig (whose name is the Americano Libre, commanded by Captain Barnard) are enlisting, and have enlisted, men in this port to proceed against the Spanish possessions. I have caused application to be made to the collector, who doubts the extent of his authority in interfering with this vessel. Now, as there must be provisions in the laws and treaties of the United States vesting an authority in some of its officers to prevent the equipment of vessels, and the enlistment of men, in the United States, to proceed against a foreign nation at peace with the United States, I make this application to you, most urgently requesting you to take whatever measures may be necessary immediately, in order to prevent the departure of the above vessel, at least until she shall give bonds that she will not commit hostilities against Spanish subjects. The vessel, it is said, will sail to-morrow morning.

Indeed, if an inquiry were instituted, I am induced to believe the above brig would be found to be a pirate.

I have, &c.,

(Signed) THOMAS STOUGHTON.

[Inclosure 2 in No. 25.]

Affidavit of John Finegan.

SEPTEMBER 16, 1817.

STATE OF NEW YORK, *ss:*

John Finegan, at present in the city of New York, being duly sworn, saith, that he was requested by a man, who is represented to be the commissary of the vessel next mentioned, to go out in the patriot brig, now lying at the quarantine ground; that the destination of the said vessel is to fight against the Spaniards; that the deponent was told that on his arrival in Spanish possessions he was to join the land-service of the patriots; that deponent knows of five persons who have been engaged in like manner, who are about to proceed on board the said brig; that deponent was told that as soon as he gets on board he will receive his advance; that officers are at present em-

ployed in the city of New York in looking out for men, and endeavoring to enlist them to proceed in the said vessel.

his
JOHN + FINEGAN.
mark.

Sworn this 16th day of September, 1817, before me.

SAMUEL B. ROMAINE.

[Inclosure 3 in No. 25.]

Mr. Stoughton to Mr. Fisk.

CONSULATE OF SPAIN.
New York, September 17, 1817.

SIR: I inclose the deposition of John Reilley, relating to the privateer brig about which I yesterday had the honor to address you. You will perceive by the affi-
[120] davit that officers belonging to that *brig are openly employed in this city in recruiting and enlisting men to join with General McGregor, and invade the possessions of the King of Spain.

I need not remind you that, by the existing laws of the United States, these enlistments are unlawful, and that not only the vessel on board of which they are to embark is liable to seizure and forfeiture, but that the captain and officers thereof, who are engaged in this business, are liable to a heavy fine and imprisonment. As these are flagrant violations of the laws of the United States, and calculated to produce serious injury to the possessions of His Majesty, and to the property of his subjects, I flatter myself that you will take, without delay, such steps as may be necessary to put a stop to these proceedings.

I have, &c.,
(Signed) THOMAS STOUGHTON.

[Inclosure 4 in No. 25.]

Deposition of John Reilley.

SEPTEMBER 9, 1817.

STATE OF NEW YORK, CITY OF NEW YORK, *ss:*

John Reilley, at present in the city of New York, mariner, being duly sworn, saith, that some days ago deponent was requested to embark on board of a vessel which was said to be lying at the Narrows, in the bay of New York, for the purpose of going to join General McGregor, and to fight against the Spaniards; that after he arrived at Amelia Island he might either join the land-service or the naval service; that deponent would be paid as soon as he got on board; that several persons were engaged in looking out for recruits to proceed upon the same service, and many men were spoken to for the purpose. Deponent was then informed that the vessel was the privateer schooner Lively, but has since learned that it was a mistake, and that the vessel in question is the patriot brig Americano Libre, Captain Barnard, which is lying at the quarantine ground, and is armed with several large guns and many men; that several persons who are officers, captains, lieutenants, and so forth, are at present employed in recruiting men to join that service, and proceed in the said brig to Amelia; that many hands have already been bespoken, and are now waiting for money which has been promised to them; that the offers made to them are to give them $8 a month and clothing, together with ten or twelve dollars in advance. Deponent supposes that the officers above mentioned were in treaty with about twenty persons, who were to go on board as soon as their advance was paid to them, and which the said officers told them would be during the course of the day; among the officers there is one who is called a general. That the above men were told, in deponent's presence, by the officers who were enlisting them, that they were principally wanted to join the land-service against the royalists. And further the deponent saith not.

(Signed) JOHN REILLEY.

Sworn this 19th day of September, before me.

FRANCIS R. TILLON,
Notary Public.

[Inclosure 5 in No. 25.]

Mr. Fisk to Mr. Stoughton.

NEW YORK, *September* 17, 1817.

SIR: I have duly received your notes of yesterday evening and of this day, and have referred to the statutes providing for the punishment of the offenses stated. It is not a case, from the evidence mentioned, that would justify the collector in detaining the vessel; the aggression is to be punished in the ordinary mode of prosecuting those who are guilty of misdemeanors. Oath is to be made of the facts by the complainant, who enters into a recognizance to appear and prosecute the offenders before any process can issue. This oath being made, and recognizance taken, the judge of the circuit court will issue a warrant to apprehend the accused, and bring them before him, to be further dealt with according to law. When apprehended, it is the province of the attorney of the United States to conduct the prosecution to judgment. I have no authority to administer an oath, or to issue a warrant, nor have I the power to issue any process to arrest and detain the vessel in question, unless by the direction of an executive officer of the United States. By the reference you have furnished, the parties complained of are to be prosecuted either under the fourth section of the act of Congress passed on the 3d of March, 1817, or under the second section of the act passed 5th June, 1794. By adverting to these statutes, it will be seen that the vessel is not liable to seizure for the act of any person enlisting himself to go on board, or for hiring or retaining another person to enlist; the punishment is personal to the offenders, and those who disclose the fact, on oath, within thirty days after enlisting, are protected from prosecution. The offenders are to be arrested and prosecuted in the manner I have stated. I beg you to be assured, sir, that it is not from a disposition either to shrink from the performance of my duty, or to decline interfering to defeat any illegal enterprise against the subjects or possessions of a power with whom the United States are at peace, that I have stated to you the embarrassments I must encounter in attempting a compliance with your request upon any information with which I am furnished. If it is in your power to procure the names of the parties, and the evidence upon which a prosecution for a misdemeanor can be founded, I will readily co-operate with the proper authorities in having every offender arrested and brought to justice. It is impracticable for me, or any other officer of the United States, to take any legal measures
[121] against aggressors upon the indefinite statement of certain persons being concerned in an illegal transaction. Since the receipt of your notes I have had an interview with the collector, and we are unable to discover any other legal course of proceeding in this case than that adopted in the ordinary cases of misdemeanors.

I have, &c.,

(Signed) JONATHAN FISK.

[Inclosure 6 in No. 25.]

Mr. Stoughton to Mr. Fisk.

CONSULATE OF SPAIN,
New York, September 19, 1817.

SIR: I have the honor to acknowledge having received yesterday your letter dated the 17th instant, in reply to mine of the 16th and 17th, wherein you mention that the case whereof I informed you in those communications was not one which would justify the collector in detaining the vessel; that the aggression is to be punished in the ordinary mode of prosecuting those who are guilty of misdemeanors; that oath is to be made of the facts by the complainant, who enters into a recognizance to appear and prosecute the offenders before any process can issue; that this oath being made and recognizance taken, the judge of the circuit court will issue a warrant to apprehend the accused and bring them before him, to be further dealt with according to law, and that when apprehended it is the province of the attorney of the United States to conduct the prosecution to judgment; that you have no authority to administer an oath or to issue a warrant, nor have you the power to issue any process to arrest and detain the vessel in question, unless by the direction of an executive officer of the United States.

In reply, permit me to request that you will take this subject again into your serious reflection. I do not urge it for the present occasion, because, even though you should, upon consideration, adopt a different opinion from that which you have communicated to me, it is now too late, since the vessel in question sailed from this port this morning. But, sir, can it be possible that the doctrine can be correct which you lay down in your letter, and which forms your reason for declining to proceed against the persons who were enlisting men in this city, with the open and avowed design of

taking them in a privateer under the Venezuelan flag to join with McGregor, and commit hostilities against a Spanish possession? I furnish you with the affidavits of two persons stating the fact, and you will excuse me in saying that I cannot think the laws of the United States render it incumbent upon me to present myself before a judge of the circuit court, and enter into bonds to appear and prosecute the offenders. On the contrary, sir, the thirty-fifth section of the judiciary act imposes upon the attorney of the United States for each district the duty of prosecuting all delinquents for crimes and offenses cognizable under the authority of the United States. I conceive, therefore, that as soon as the attorney of the United States receives information of the infraction of the laws, it becomes his duty to take such measures as may be necessary to bring the offenders to justice; he is the person who must take the witnesses before a judge or magistrate; he must become the informer; he must prosecute, that is, he must take, or cause to be taken, the steps which are necessary to arrest the offenders and bring them to punishment. I am the more confirmed in this belief, because the thirty-third section of the judiciary act directs that offenders may be imprisoned by a judge or magistrate, at the expense of the United States, and leaves it discretionary for the witnesses to appear and testify. That act does not require that the informer should enter into bonds to appear and prosecute. The offense of which I have complained is of a most serious nature. The United States should not afford means to one nation at peace with them to annoy and invade another nation also at peace with them. And it becomes the duty of all the officers of the United States, as they value the reputation and the interest of their country, to discharge, with alacrity and zeal, those duties assigned to them, which can preserve the neutrality of their country, and prevent its becoming the center of reunion for the enemies of Spain, and to prevent their own citizens joining in measures of hostility and aggression. It is a matter of notoriety that the insurgent governments of South America all have their agents in this country, that swarms of privateers are fitted out, armed, and equipped for war in the United States; and all the injuries and desolation committed by them upon the Spanish commerce emanate from the facilities which they find in the United States to prepare for themselves these outrages. And, sir, Congress having passed laws rendering these acts illegal, I cannot admit that individuals must undertake the task of informing against and prosecuting the offenders. These offenses are against the dignity of the country, they affect the community at large; I cannot, therefore, bring myself to believe that it is the province of individuals to bind themselves to prosecute offenders, any more than I can think that it is the duty of an individual who gives information that a murder has been committed to enter into bonds to prosecute the murderer. No, sir; the laws must have confided this odious but necessary task to its public officers; they must see that offenders are brought to punishment; and, sir, I do further consider that this duty has by law been devolved upon you. Regretting, therefore, that this expedition has been permitted to proceed unmolested, notwithstanding the information which I communicated to you, you will excuse me if, on all future occasions of a similar nature, I should renew my application to you to prevent a new aggression.

I beg, &c.,

(Signed) THOMAS STOUGHTON.

No. 26.

Don Luis de Onis to Mr. J. Q. Adams.

[Translation.]

PHILADELPHIA, *November* 2, 1817.

SIR: I have just received a statement, dated the 14th of July, addressed to me by the directors of the Royal Philippine Company at Madrid, informing me of the unfortunate fate of two ships belong-
[122] ing *to the said company, the one named Nuestra Señora del Buen Suceso, *alias* La Esperanza, and the other, El Triton, captured, the first on the 8th of June last, the day on which she sailed from Cadiz to Calcutta and Manila, by the pretended insurgent privateers, La Independencia del Sud, commanded by James Chaytor, of eighteen guns, and one traversing 42-pounder; and the Mangore, under the orders of same Chaytor, of fourteen guns, and one traversing 36-pounder; and the ship Triton, from Calcutta and the coast of Coromandel, which was

captured off the Cape de Verd Islands after a gallant defense of two and a half hours, in which she lost twenty killed, and sprung her foremast, by a privateer (of the same description as the two above mentioned) called the Regent, *alias* Trepacamara, commanded by one Manson, who, when seventeen days out from Baltimore, fell in with the Triton, and conducted her as a prize to Buenos Ayres, where she arrived on the 2d of April last, according to the advices received by the underwriters at Lloyds, from their agent at Buenos Ayres.

The directors of the Royal Philippine Company, in giving me an account of these distressing events, inform me that they have understood, by the advices which I have given to the principal secretary of state of the King, my master, that Captain James Chaytor, of the piratical vessel La Independencia del Sud, kept depending a demand made at the instance of the Spanish consul at Norfolk, relative to the safe-keeping of certain Spanish property deposited in the custom-house of that port, by the above-named pirate, and one called the Atrevida; whence it is incontestably proved that the armament of La Independencia del Sud is made in the ports of these States, and that the captain, officers, and the greater part of her crew are likewise subjects of the same States. From presumptive causes and circumstances they suppose that the other privateer may be the Regent, *alias* Trepacamara, Captain Manson, which vessel sailed from Baltimore seventeen days previous to his capturing the Triton.

I have repeatedly found myself under the painful necessity of representing to the President, through the medium of your predecessors, that Article XIV of the treaty between His Catholic Majesty and the United States establishes the most positive right of reclamation on the Government and those citizens who have taken or do take part in the numerous armaments of privateers, which have taken place in the ports of this republic, under cover of the pretended commissions so profusely circulated by the insurgents of the revolted provinces of the King, my master, to attack openly and in a barefaced manner the subjects and commerce of Spain; and that the same article declares those to be pirates who engage in these horrid cruises, and consequently obliges the contracting parties to punish them as such, as a just atonement for their offenses. On the 2d and 15th of January, and on the 29th of March last, I officially addressed your immediate predecessor, and remonstrated against the robberies and outrages committed by various privateers, and, among others, by those called Independencia del Sud and Mangore, the captains of which, James Chaytor and Barnes, are citizens of these States. In the note transmitted to the Secretary on the 4th of March, (14th March,) I found myself under the necessity, in consideration of the excesses committed against the subjects of the King, my master, and of those which, through the impunity and toleration of some of the authorities of this country, were about to be repeated by vessels bought, armed, manned, and equipped in the ports of this republic, in violation of the laws of nations, of the express stipulations of an existing treaty, and of the rights of humanity; and in discharge of my duty I was laid under the necessity, I say, of representing and remonstrating, in the name of my sovereign, on the subject of the injuries and losses which had already resulted, and might further result, to his subjects, and at the same time of protesting against the authors of the same. The capture of the ship Esperanza has been one of the fatal consequences of allowing the privateer Independencia del Sud to proceed freely to sea from Norfolk, after His Catholic Majesty's consul, Don Antonio Argote Vallalobos, had made proof of the illegal conduct and atrocious acts of her captain, James

Chaytor; and that the ship Triton proceeds likewise from the toleration granted in this country of arming and equipping against the trade of Spain; under which supposition I cannot refrain from stating to you, in order that you may be pleased to communicate the same to the President, that the aforesaid Royal Company of the Philippines have an incontestable right to claim of this republic full compensation for the value of the said ships and cargoes, by reason of the armament of the privateers which captured them having been made in its ports.

I have the honor to inclose, for the suitable purposes, a note of the articles shipped on board the Esperanza at Calcutta and Manila, for the account of the Royal Philippine Company, and of the return cargo of the Triton from Bengal and the coast of Coromandel to Cadiz, which sums united amount, according to the invoice, to that of $701,980, to which is to be added an interest of 15 per cent. on the disbursement of the amount of the cargo of the Triton, for the period of one and a half years, and 6 per cent. in Europe on the cargo of the Esperanza.

I hope you will take into consideration the contents of this note, and be pleased to call the attention of the President to the interesting subject treated of in it, that His Catholic Majesty may adopt such measures as his wisdom may dictate to him, for the purpose of collecting, as far as it may be possible, any parts of the two prizes above named for the benefit of their owners; and at the same time giving orders to the competent authorities in the ports of this republic to discover such effects as may arrive making part of the same.

I therefore hope this from your established zeal and the well-known rectitude of the President, deferring to my return to the seat of government the verbal communication of a plan which I have meditated, from a desire to settle amicably an affair of such importance.

I avail, &c.,

(Signed) LUIS DE ONIS.

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[123] *No. 27.

Don Luis de Onis to Mr. J. Q. Adams.

[Translation.]

WASHINGTON, *May* 7, 1818.

SIR: I have received official advice, through different channels, that the expedition of French adventurers which left Philadelphia towards the end of last year, with the apparent intention of going to Tombigbee, but in reality to Galveston, is now receiving, at the former place, a considerable number of recruits, and large supplies of military stores from the ports of New Orleans, Charleston, Savannah, and others within this republic, from whence they proceed in small parties to Galveston, and thus elude the vigilance of the Government.

From the period at which, namely, on the 6th of September last, I denounced to you the preparations for this expedition, referring for its unquestionable certainty to the plan communicated to this Government by the minister of France, which offered the most indubitable proof that Joseph Bonaparte was at the head of it, with the rash project of being crowned King of Mexico, I have relied on your assurances to the same ambassador, and which were forthwith communicated by him to me, that the most effectual measures had been taken by the Government to

prevent its execution. But, perceiving that this expedition daily takes a greater consistence, and that the recruiting and supplies clandestinely sent from this republic are not put a stop to, I can no longer refrain from again calling your attention, and through you that of the President, to the enormous abuse of the hospitality offered by this republic, on the part of Joseph Bonaparte and his adherents, with a view to disturb the tranquillity of Europe, and especially that of the possessions of the King, my master.

I would have considered myself dispensed from the necessity of again pressing this subject on your attention, if it had appeared possible for me to restrain these armaments by the employment of judicial means; but, unfortunately, the act of Congress of the 12th of April last, for preserving neutrality with foreign nations, and others already in force, although highly judicious, are easily eluded; and although these practices are publicly notorious throughout the whole Union, His Majesty's consuls advise me that, through a deficiency of evidence, they cannot be restrained by a regular application of the law.

Convinced, however, as I am, that nothing is more remote from the intention of the President than to tolerate hostile expeditions within the territories of the republic, directed against the powers with which it is in a state of profound peace, I cannot for a moment doubt that His Excellency will take into his most serious consideration what is due to the demand which I now make, in the name of my sovereign, that Joseph Bonaparte, the Generals Lallemand, and other Frenchmen now residing in this country, be compelled to keep themselves within the bounds prescribed by the hospitality and generosity with which they have been received, and prevented from continuing to organize expeditions for the purpose of invading the territory of His Catholic Majesty, and disturbing the peace enjoyed by his subjects.

I therefore hope that you will be pleased, sir, to inform me of the measures which may be taken on this subject, in order that, in communicating them to my sovereign, His Majesty may see in them a confirmation of the amicable sentiments of this republic toward his monarchy.

I renew, &c.,

(Signed) LUIS DE ONIS.

No. 28.

Don Luis de Onis to Mr. J. Q. Adams.

[Translation.]

BRISTOL, *June* 9, 1818.

SIR: At my passage through Baltimore, on my way to Philadelphia, it was represented to me by His Catholic Majesty's consul for the State of Maryland, that there were in that port four pirates, or privateers, if you please so to call them, namely, the Independencia del Sud, Captain Grinnold; the Puerredon, *alias* Mangore, Captain Barnes; the Republicano, Captain Chase; and the schooner Alerta, Captain Chaytor. These pirates, denominated privateers, or vessels of war, of the pretended government of Buenos Ayres, have entered the port of Baltimore for the purpose of dividing the spoil resulting from their depredations on Spanish commerce, and of refitting and arming to renew these excesses on the high seas. It is a matter of universal notoriety at Baltimore that three of the above-named vessels were fitted out there, and

the fourth is a schooner captured by them from Spanish subjects; it is no less so that their commanders, and the greater part of the crews, are American citizens, and that there is scarcely a single individual belonging to Buenos Ayres to be found among them.

Whoever has read the so-called constitution and the provisional laws existing at Buenos Ayres, (for there is nothing there but what is provisional,) must know that no vessel of the rebels can sail under their flag unless the captain and one-half of the crew be natives of that country, and that no foreigner can be naturalized there until after five years' residence. I submit to your judgment, sir, whether, on such grounds, the vessels in question can be admitted to be Buenos Ayres privateers, or whether the American captains and crews that man them, commissioned or not by that rebel government, can be considered as citizens of that country; and whether, agreeably to the laws of nations, and the existing treaty between His Majesty and this republic, they can be viewed in other light than as pirates; and if it be possible for you to conceal from your discernment that the captains and crews of these vessels have violated the laws of this Union in perpetrating these atrocities, to the dishonor of the American name; I repeat, that I submit it to your
[124] consideration, to determine whether *the prizes made by vessels, under these circumstances, ought not to be restored to their lawful owners, or that these persons ought to be indemnified by the United States, seeing that they have tolerated such armaments in violation of their laws, of the laws of nations, and of the existing treaty between Spain and this republic.

I am aware, sir, that you will tell me that the courts are open to the recognizance of claims of this nature, and ready to apply the law to such cases as occur and are supported by suitable testimony; but I am under the necessity of declaring to you that it is in vain to seek such testimony, however clear it may be to everybody. I have demonstrated, in the most pointed manner, to His Majesty's consul the propriety of directing his attention to points of so much importance; but he has proved to me that a great portion of the commercial people of Baltimore being interested in the cases which produce my present reclamations, no one is willing to come forward and offer testimony against what is termed the general interest; and thus the wise measures of Government are eluded, justice is paralyzed, and the suits procrastinated and deferred from court to court, with a view to deprive His Majesty's subjects of that justice which they have an undoubted right to seek in the tribunals on all their claims.

Presuming that all I have stated is well known to you and to the President, I cannot but persuade myself that it is highly disapproved of, and I am entirely willing to believe that if these abuses are not remedied, it is owing to a want of due attention to the execution of the orders of the Government; but my duty compels me to call the attention of the President to this important point, and to represent to him, through the medium of your Department, that (as far as I am able to ascertain) the vessels in question, in addition to their object in coming hither for the purpose of conveying to the parties interested at Baltimore the proceeds of their spoliations on the Spanish commerce, and among others, that of the Philippine Company's ship Triton, to the amount of $1,500,000, captured by the pirate Independencia del Sud, and carried to Buenos Ayres to be sold there, have a project in fitting out anew, and of attacking some possessions of the King, my master, on this continent, to which they may more easily send their prizes; that these same privateers have brought in two Spanish prizes, which are at this moment in

the port of Baltimore, one of them a vessel belonging to the royal navy. I therefore demand, in the name of the King, my master, the restoration of those prizes, as having been made by American citizens, and vessels fitted out in this country, in violation of the existing treaty between the two powers, and that the sailing of the said privateers be stopped, and they compelled to give security for the result of an expedition of which, without knowing positively that they intend to execute it, I have the strongest grounds for presuming they mean to do. I therefore hope that this subject will receive all the attention which I claim, and that you will be persuaded that the taking the liberty to trouble you with it is because I have no other resource, as I have in all other cities of the Union, where the officers of the Government afford the requisite attention to the reclamations of His Majesty's consuls, and the citizens are disposed to offer the necessary testimony, in support of justice and the maintenance of the laws.

I renew, &c.,

(Signed) LUIS DE ONIS.

No. 29.

Don Luis de Onis to Mr. Adams.

[Translation.]

BRISTOL, *July* 27, 1818.

SIR: It is some time since I have received positive and circumstantial information that a person, acting under a commission from the rebels at Buenos Ayres, had given orders for the building of two frigates of twenty-eight or thirty guns each, at New York, and that, armed, equipped, and manned with citizens of this Republic, they are to proceed from that port on a cruise against the commerce and subjects of His Catholic Majesty.

Although so manifest a violation of the laws of the United States, to the injury of my sovereign, imposed on me the duty of immediately soliciting of the President such measures as are in conformity with the laws of the Union, and the peace and good understanding subsisting between the two nations, and would put a stop to this evil; yet, faithful to the system I have laid down of not trespassing on the attention of your Government except in cases of indispensable necessity, I directed His Majesty's consul at New York, after he had obtained all the legal evidence required by the courts, to have recourse to them, with that calmness and confidence with which the justice of his cause should inspire him, when submitted to impartial and enlightened magistrates.

His Majesty's consul has just informed me that, agreeably to my instructions, he had applied to the district attorney, stating that he was possessed of sundry declarations of persons, corroborating each other, showing that the laws of the United States had been violated, and requesting him to cause the said vessels to be stopped and proceeded against, together with the parties concerned in their equipment, in the manner prescribed by the act of Congress of 20th April last, section 11. The district attorney appears not to have been very anxious to carry the act into execution, as he replied that he would not do so although fifty such declarations were presented to him. I do not pretend to inquire into the motives of the attorney's feelings or his conduct, which, to say the least, was extraordinary; but I deem it indispensable to transmit to you four of the original declarations referred to, that they may be laid before the President, and that he may be pleased to direct, with the ur-

gency required by the case, the collector of the customs at New York to stop the above-mentioned vessels, in order that they, as well as the parties engaged in their outfit, may be proceeded against in due form of law, and the necessary force employed for the faithful execution of his duty.

This demand, which I renew in the name of my sovereign, being [125] in strict conformity with the *laws of this republic, I cannot for a moment doubt that the President will readily comply with it; and that you will have the goodness to advise me of its having been carried into effect, that I may direct the consul to produce the necessary testimony for the elucidation of a case transcendently important to the interests of my sovereign.

I renew, &c.,

(Signed) LUIS DE ONIS.

[Inclosure 1 in No. 29.]

Declaration of Samuel Samuels.

NEW YORK, *July* 25, 1818.

STATE OF NEW YORK, *City of New York, ss:*

Samuel Samuels, by profession a mariner, at present in the city of New York, being duly sworn, says that about the 11th or 12th of July instant, deponent was at Dominick Morris's house, where they were shipping hands for the Curiazo; he met there a Mr. Brown, who was the man who attended on shore to the enlisting and shipping of the crew; this gentleman asked deponent whether he did not wish to ship on board the Curiazo, and upon this requested him to walk up stairs, and he would inform deponent all about the object of the vessel; they went up stairs, and Mr. Brown then said that the Curiazo was destined to go round Cape Horn, or would go to Buenos Ayres in the Patriot service; that she would join the other ship, which was lying in North River, named the Horatio, and they would be absent about two years; deponent signed articles at the office of the notary, Mr. Palmer; he did not read the articles at the time of signing; the wages were $14 a month, and two months in advance, which sum is paid in like manner to all the crew, $14 at the time of signing the articles, and $14 after getting on board; he went on board on Tuesday, the 21st of July instant, and found sixty hands on board, agreeable to the muster which was made; and there were others on shore who had enlisted but not yet come aboard; there was a captain, several lieutenants, a sailing-master, many midshipmen, a boatswain, boatswain's mates, boatswain's yeomen, several quartermasters, a gunner, gunner's mate, and two quarter-gunners, two captains for each of the tops, fore-tops, mizzen-top, and main-top; two captains of the forecastle, two captains of the after-guard, a captain of the hold, and green hands to form a company of marines; deponent was captain of the main-top, of the larboard watch; the hands were exercised every day in loosing and handling the sails; some of the hands were employed in making wads for the cannons; the guns were not yet come on board, but they were expected daily, and the hands conversed about the stations which they would hold at the guns; the exercising of the crews, which he has before mentioned, was the same as is customary in the service of the United States on board their vessels of war; there was a regular watch kept up during the day and night, one-half the crew being on watch all the night; the hands were all piped by the boatswain and boatswain's mate at their several meals; when officers came on board the sides were manned for them by way of salute; and in every respect the discipline and duty kept up was the same as is practiced in the Navy service.

When the deponent shipped, the notary told him to leave a will and power to enable the landlord to receive the prize-money which deponent might become entitled to, which deponent did accordingly, in favor of Dominick Morris; the general understanding on board the vessel is that they were to cruise along the coast of South America after their arrival at Buenos Ayres. The vessel is built in every respect as a vessel of war; the water below is secured exactly in the manner that is done on board a man-of-war, which is different from what is usual in the merchant service.

Deponent further saith not.

(Signed) his SAMUEL + SAMUELS. mark.

(Signed) JAMES HOPSON, *S. Justice.*

[Inclosure 2 in No. 29.]

Declaration of George W. Lynch.

NEW YORK, *July* 25, 1818.

STATE OF NEW YORK, *City of New York, ss:*

George W. Lynch, of the city of New York, merchant, being duly sworn, says that on the 23d day of July instant, he went on board of the ship Curiazo, lying in the North River in this port, in company with a Mr. Atkinson, who said he was purser of the said vessel. Deponent counted thirty cannon lying on the deck, and a number of new gun-carriages which were lying upon one another, and appeared to be equally numerous. He was presented to the several officers; was told by them that there was a captain, four lieutenants, and a number of midshipmen; that the captain is named Delano, the first lieutenant is named Van Bueren, the second Grinnelow, the third Smith, and the fourth Cobbett. He was told by the purser that the vessel, together with the Horatio, another ship lying near, were bound to Buenos Ayres. There appeared to be a great number of men on board: he was told by the said purser that it was their intention to take one hundred men, that the crew were paid two months' advance, and that as a further inducement to them to ship, they had the prospect of prize-money. In conversation with a Mr. Sullivan, who is at the head of the surgical department for the two vessels, and was now on board the Curiazo, he (Mr. Sullivan) said, "I am sorry that the guns are not carronades instead of gunnades;" but then immediately added, "However, it is better as it is; we shall want long guns to fight the Spaniards." Deponent was carried through the vessel, and the different parts of
[126] it were pointed out to him; the captain's room, the lieutenant's room, and the midshipmen's room, were severally and respectively designated; there was a quantity of cannon-balls between the decks; all hands were piped by the boatswain while deponent was on board. This vessel is newly built, has been launched but a short time, and is now preparing for her first voyage; she is pierced for many guns, and is built in every respect like a frigate.

Deponent left this vessel in company with the surgeon, Mr. Sullivan, and proceeded with him to the other ship, the Horatio. This gentleman is the surgeon of the Horatio, and told deponent that he had selected the surgeons for this and the other vessel, the Curiazo: that he had examined them, in order to ascertain that they were duly qualified; he mentioned that the crews of each vessel would consist at present of one hundred men for each, but that their complement was three hundred men for each; that the medical list which was handed to him for both vessels was for six hundred men. He showed deponent his medicine-chest, his tools, and other implements, and said that he had everything in complete order. He showed deponent into a room below the cabin, which he said would be his station in time of action; deponent said he supposed there would be little fighting, to which Mr. Sullivan answered, "I don't know, the Spaniards have got a fine frigate out there, with five hundred men." Deponent was told on board of this vessel by the said surgeon, and by another officer, the second lieutenant, that besides the captain, Skinner, who was commodore of the two vessels, the Horatio had four lieutenants and a number of midshipmen: the first lieutenant is named Currie, and the second Eakin. Deponent was shown into the several rooms of the captain, lieutenants, and midshipmen: the cannon had not yet been brought on board of this vessel, but the officers told deponent they expected them shortly. This vessel resembles the other in every respect, was built at the same time, and has never yet been to sea. Speaking about the complement of men for these vessels, Mr. Eakin, the second lieutenant, told the deponent that although they would take out for the present only one hundred men each, they would have no difficulty in making up the full number, which would be three hundred, at Buenos Ayres, because sailors there would leave the privateers there to enter these vessels. He said that if Mr. Aguirre, when he commenced the building of these vessels, had employed a merchant, instead of making the contract himself, he would have saved a great deal of money, at least 15 per cent.; that Dacey and Didier, of Baltimore, had received money from Aguirre, and had offered to transact all the business of these vessels, and to bond them for per cent., but that he was unwilling to allow them more than 2½ per cent.; they offered also to allow him bank interest for his money while it was in their hands, but they came to no agreement, owing to the smallness of the commission which Aguirre was willing to allow them: and that the vessels had cost him a very large sum of money, everything having been fitted up in the most costly manner: that the cannon had been made by Mason, of Washington. The surgeon, Mr. Sullivan, speaking of the discipline of the two vessels, said that of the Horatio was superior to the Curiazo; that on board of the Horatio the medical returns were made daily, the same as on board a man-of-war. When deponent went on board the Horatio the sides were manned, which was also done when he left it: this ceremony is a compliment or salute to the person who comes on board, and is customary on board vessels of war, and not in merchant vessels.

While on board the Horatio, the said Eakin said that he had always been treated

well by the Spaniards, but said some other words, the import of which was that this was a speculation, and that he must do the best he could for himself. Mr. Currie, the first lieutenant, also said that he had always been well treated by the Spaniards, and that he would treat them so until he could not help doing otherwise, alluding to what he would do in time of battle.

Mr. Wynans, of the firm of Ten Eyck, Wynans & Co., told deponent that they, together with two other block-makers, made the blocks for both of the said ships; they were employed by Captain Skinner and Mr. Aguirre jointly, both being together, but Mr. Aguirre gave the directions to Skinner, and appeared to be the owner: that he, Wynans, called frequently upon Aguirre for directions, and when all the work was done Aguirre paid him.

Mr. Bakewell, a sail-maker, told deponent that Mr. Aguirre made the agreement with him for the sails of one of the ships, and paid him the amount.

(Signed) GEO. W. LYNCH.

Sworn this 28th day of July, 1818, before me.

(Signed) CHARLES CHRISTIAN.

[Inclosure 3 in No. 29.]

Declaration of John B. Sickles.

NEW YORK, *July* 25, 1818.

STATE OF NEW YORK, *City of New York, ss:*

John B. Sickles, being duly sworn, says that on the 22d of July instant, he called upon Joseph Skinner, whom he understood to be the captain or commander of the two vessels named Curiazo and Horatio, which are fitting in this port for Buenos Ayres: he met him in the neighborhood of Washington Hall, at his residence, and found a large number of gentlemen collected—there were about twenty, among whom was Mr. Aaron H. Palmer, (the notary;) the conversation was exclusively relating to those vessels, their arms and equipment, some saying that a portion of the guns was larger than others. On the 23d of July he saw Captain Skinner again, and asked to provide the deponent with an officer's berth on board one of the said vessels; Captain Skinner referred him to Mr. Palmer, who said that all the officers' stations were full; deponent repeated his desire to be employed, and Skinner told him he might go as supernumerary, in the capacity of acting midshipman. During this conversation, Mr. Palmer told Captain Skinner that he was short of funds, to which Skinner replied, you must go to Mr. Aguirre for them; you know I am not the owner. On the 24th of July deponent saw Captain Skinner again at Mr. Palmer's office; deponent asked when he should go on board? Skinner told him, during the course of the day. Deponent accordingly went on board on the 24th, in company with Mr. William Nesbit, a young man who
[127] was also told by Captain *Skinner that he might go as supernumerary. When deponent got on board of the ship Horatio, which was lying in the stream, he reported himself to Lieutenant Currie, who was the first lieutenant on board thereof. Currie told deponent and the said Nesbit that he could not receive them unless they brought a written order from the captain, because they had so many officers already; deponent remained on board about four hours, during which time he got into conversation with several of the officers; one of them, named Weed, told deponent that he is the captain of marines on board; that when the vessels arrived out at Buenos Ayres the officers expected to receive their warrants from the Buenos Ayres government; that Captain Skinner had promised them that he would get them from that government for these officers. Deponent was told by Mr. Weed that there were three lieutenants on board: that there were eight midshipmen on the list, and twelve supernumeraries, besides deponent and Mr. Nesbit; that after the vessel got out to sea, if these persons were wanted they would be turned forward; this deponent understood to allude to their being wanted in time of action. He said they had on board at present ninety-five men, and they intended to get more; he said he expected that it would be a troublesome job for him to exercise his marines, which he would have to do soon; the discipline on board of this vessel is the same as that on board of a vessel of war; the watch was changed while deponent was on board, and the lieutenants also changed their watch, the hands being piped by the boatswain. The armed chest, containing guns, pistols, cutlasses, &c., was brought on board while deponent was there; he was told that the great guns were expected on the following day, (the 25th;) that the guns of the Curiazo were 18-pounders, between carronades and gunnades, but that those of the Horatio were long eighteens, that being the commodore's ship; that they were brass guns, and had been selected for this vessel: that these guns were different from those of the other vessels, because they were intended for long fighting, or fighting at a distance, and the others for close engagement. After

being on board for several hours, deponent came ashore with the said William Nesbit, and called upon Captain Skinner, told him what Lieutenant Currie had said, and asked him for an order, which Captain Skinner gave, and which is in the words following: "Mr. Currie: Sir, you will please to receive Mr. J. B. Sickles and William Nesbit on board the ship Horatio as supernumeraries, and you will oblige yours, Joseph Skinner, 24th July, 1818." This note is directed "Mr. William Currie, Horatio." Deponent further says that when he was on board the Horatio on the 24th, the officers were speaking about the cannon which was expected on board the Horatio, and that which was on board of the Curiazo, and said that they would mount it, because they did not expect that there would be any opposition from the Spanish consul. There was a large quantity of potatoes on board, which they were employed in assorting, and while thus engaged one of the officers said those were very bad potatoes for a cruise; the number of barrels, deponent supposes, nearly two hundred.

And further the deponent saith not.

(Signed) JOHN B. SICKLES.

Sworn this 25th day of July, 1818, before me.

(Signed) CHS. CHRISTIAN, *Sp. Justice.*

No. 30.

Don Luis de Onis to Mr. J. Q. Adams.

[Translation.]

BRISTOL, *July* 28, 1818.

SIR: I had the honor yesterday to transmit to you the declarations of four individuals, affording the most positive proof of the violation which has taken place, in the port of New York, of the laws of this republic, to the signal injury of the interests of my sovereign. I now inclose three other declarations, corroborating the former, and establishing the fact to which I refer.

I assure myself that, in consideration of these circumstances, you will have no doubt of the justice of the demand I now make, in the name of the King, my master, or of the urgency with which I claim of the President to issue the necessary orders to the collector of the customs at New York to detain the two Buenos Ayres armed ships alluded to, and the requisite instructions to have the case immediately brought before the proper tribunal.

I trust, sir, that you will have the goodness to transmit to the aforesaid collector the seven declarations fowarded to you, for the purpose of preventing the escape of these two armed vessels, as they have already endeavored to do; it being confidently relied on that, if the suit be once instituted, nothing can save them from the impartial justice of the court.

I beg you to pardon this trespass on your time, to which circumstances have compelled me, and that you will accept, &c.

(Signed) LUIS DE ONIS.

[Inclosure 1 in No. 30.]

Declaration of James Young.

NEW YORK, *July* 25, 1818.

STATE OF NEW YORK, *City of New York, ss:*

James Young, by profession a mariner, at present in the city of New York, being duly sworn, says, that about three weeks ago the deponent was requested by a former shipmate of deponent's, named David Rees, to enlist on board of the ship Curiazo. Deponent went on board of that vessel, and there saw Mr. Grimelow, who was the second lieutenant thereof. This gentleman gave deponent a note to Mr. Brown, who was the shipping-officer of the vessels, recommending him to take deponent as boat-
[128] swain's mate for the said vessel. Deponent saw Mr. Brown, who told him "there

was no vacancy for boatswain's mate, because he had already shipped two, but that he might have the berth of quarter-gunner. This berth deponent accepted, and afterward went to the office of the notary in Pine street, whose name deponent believes is Palmer. At this time deponent was told by Mr. Brown that the vessel was going to Buenos Ayres or to the Cape of Good Hope. Deponent did not read the articles when he signed them, which was about the same time before mentioned. Deponent went on board the said vessel, the Curiazo, which is commanded by Captain Paul Delano. This vessel is pierced for 32 guns, although there may be more, as deponent has never counted the number of ports. Since deponent has been on board they have taken in a great quantity of extra spars and rigging, and a quantity of cordage, much more than is used in the merchant service. She has a long-boat, yawl, and sundry other boats, six or seven in number altogether.. Deponent continued on board until last Friday, the 17th instant. There are on board and in the service of the vessel, a captain, three persons whom deponent knows to be lieutenants, a sailing-master, master's mate, and more than six midshipmen, but how many precisely deponent does not know. When he left the vessel there were about 70 hands or sailors on board, and deponent was informed on board by the people generally that the number was to be increased to 150 more. The third lieutenant said, in deponent's presence, that when they had 150 men more they would look quite smart. There are a boatswain and two boatswain's mates, four quartermasters, two captains of the fore-top, and two of the main-top, and two of the mizzen-top; two captains of the after-guard, two quarter-gunners (of which the deponent was one,) a captain of the hold, and a boatswain's yeoman. The crew are mustered every Sunday; the hands are piped to breakfast, dinner, and supper; and when an officer comes on board, the boatswain attends the side, and the whole service and duty is performed in every respect the same as is done on board of a man-of-war, which deponent is conversant with, having served in the English navy nearly five years. A quartermaster is kept constantly on the lookout to prevent any persons coming on board without leave, and at night some watch forward and some aft. It is the understanding of all the hands on board, that when they arrive at Buenos Ayres they will be employed in the service there, and the officers have said they will make their fortunes by it. The boatswain, Mr. Crisp, told deponent yesterday, that the night before the cannon were taken on board. James Johnson, the quartermaster, told deponent the same thing; and that thirty-two 18-pounders had been taken on board, besides a quantity of shot. The same was mentioned by the boatswain's mate. He further says that the above deposition has been this day read to him, and that he declares the same to be in every respect correct. The Curiazo is a new vessel, just built in the port of New York, and has never been to sea. Captain Joseph Skinner, deponent has heard and believes, is captain of another ship also lately built in the port of New York, and which has not yet sailed, but which is intended to go on the same service with the Curiazo. The name of the first lieutenant is M. Van Bueren.

(Signed) JAMES YOUNG.

Sworn this 25th day of July, before me.

(Signed) GEO. W. MORTON,

Commissioner in the Circuit Court of the United States of America for the S. D. N. Y.

[Inclosure 2 in No. 30.]

Declaration of David Rees.

NEW YORK, *July* 25, 1818.

STATE OF NEW YORK, *City of New York, ss:*

David Rees being duly sworn, says, that he has heard, read, and examined the preceding deposition of James Young; that all the facts therein stated, relating to the condition and armament of the said ship Curiazo, are correct and true in every respect; that deponent is employed at present on board the said ship Curiazo in the capacity of boatswain's yeoman; he was shipped by Mr. Brown, the shipping-officer of the vessel; he signed articles at Mr. Palmer's; has been on board the Curiazo since the 11th of July instant. On the 22d and 23d of July the great guns were taken on board. Last evening, and until a late hour of night, these cannons were taken from on board again, as also the shot, and were put on board of a sloop, which it was mentioned, and generally understood on board, was going down toward Sandy Hook, to be put on board again there. Captain Paul Delano commands the Curiazo; that a few days ago deponent told said captain that he could wait no longer, and would not go with the vessel; Delano urged him to remain, said he was only waiting for his sweetmeats, meaning his cannon, and that as soon as they were got on board they would show the Spaniards play. That at present they cleared out for Buenos Ayres, and all hands shipped as seamen, because they did not dare to do otherwise, but that as soon as the vessels got out

to sea, then the several stations would be assigned to the men respectively. This vessel is completely a frigate, duty is done on board the same as in the state service, and she has forty-two different signals, many of which deponent has seen. Captain Joseph Skinner commands the other ship, called the Horatio, which is to be used in the same service; he is the commodore of both vessels. Deponent was going to hoist a pennant one morning on board the Curiazo, when the lieutenant ordered him to stop and see whether the commodore (meaning the other ship, the Horatio) would hoist, and finding that he did not, deponent stopped, and the pennant was not hoisted.

Both these vessels were lately built in New York; they have not been to sea.

(Signed) DAVID REES.

Sworn this 25th of July, 1818, before me.

(Signed) GEORGE W. MORTON.

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[129] *[Inclosure 3 in No. 30.]

Declaration of Thomas Stoughton.

NEW YORK, *July* 26, 1818.

STATE OF NEW YORK, *City of New York, ss:*

Thomas Stoughton, consul of Spain, being duly sworn, says: On the 1st day of September last, 1817, he had a conversation with Mr. Noah Brown, of the city of New York, who told him that Don Manuel Hermenegildo de Aguirre, the agent or representative from the Buenos Ayres government, had contracted with him (Brown) and with Mr. Cheesemen of this city, to build two vessels of twenty-eight guns each, for the use of the government of Buenos Ayres; that their tonnage would be 700 tons each, for which he would pay $40 a ton for the hulls; that they would be launched about the 30th December, 1817. That they would cost, when armed, about $80,000 each.

(Signed) THOMAS STOUGHTON.

Sworn this 26th July, 1818, before me.

(Signed) GEORGE WILSON.
Notary Public, New York.

No. 31.

Mr. J. Q. Adams to Don Luis de Onis.

[Extract.]

WASHINGTON, *August* 24, 1818.

I have received your letters of the 27th ultimo and 5th instant, with their respective inclosures, all of which have been laid before the President. With regard to the two vessels alleged to have been equipped at New York, for the purpose of cruising under the flag of Buenos Ayres, against Spanish subjects, the result of the examination which has taken place before a judge of the Supreme Court of the United States has doubtless convinced you that no prosecution commenced by the Government of the United States against the persons charged with a violation of their laws and their neutrality could have been necessary or useful to you, no transgression of the law having been proved against them.

No. 32.

Don Luis de Onis to Mr. J. Q. Adams.

[Translation.—Extract.]

WASHINGTON, *October* 24, 1818.

His Majesty, carrying his particular consideration for the United States and his sincere desire to meet the wishes of your Government as

far as is compatible with the rights and dignity of his Crown, has authorized me to remove the principal difficulties, and to offer the Government of this republic the liberal proposals which I have the honor to inclose in a separate paper.

If these proposals should, as I hope, appear admissible and satisfactory to your Government, all the rest which it will be requisite to change or add to perfect the definitive adjustment between the two powers cannot fail to follow of course and be easy to arrange. Finally, if there should arise any difficulty or doubt in the mind of the President upon any one of them, which I can remove or clear up, I shall be happy to be made acquainted with it, and most cheerfully do for that purpose whatever may be within the limits of my powers and instructions. I conceive that what I now propose is best calculated to conciliate all the different views and claims, and to adjust all pending differences upon just and liberal principles; it being evident, moreover, that the advantages are wholly in favor of the United States.

In concluding this note, I beg leave to repeat that, if before we agree on what is requisite to effect the desired arrangement, and with a view to proceed to it with a more perfect conviction of the unquestionable rights of each one of the two powers, you should think it advisable that we should modify and correct any points stated in the present note, by the production and examination of the documentary proofs which I have offered, I am ready to submit them the moment I receive such intimation from you.

[Inclosure in No. 32.]

Proposals of Don Luis de Onis.

[Translation.]

The two contracting parties, animated by the most sincere desire of conciliation, and with the view of eradicating all the discussions which exist between them, and to hasten the conclusion of a definite and prompt arrangement, by which the good understanding they desire perpetually to maintain with each other may be strengthened, reciprocally renounce all claims for damages or injuries which they themselves or their respective subjects or citizens may have suffered, of whatsoever nature they may be, whether they have or have not been presented or made until this date, so that they are to be considered as entirely canceled and adjusted, excepting those which are specified in Article I.

Although the two high contracting parties oblige themselves to cause the stip-
[130] ulations contained in this treaty, and in that of limits and navigation, of 1795, to be complied with in all their parts, nevertheless, desirous of avoiding all doubt or misinterpretation of their respective clauses, they oblige themselves to make the declarations or laws requisite for the most exact observance of all that is above stipulated, as good faith and the honor of both governments require, adopting the efficacious measures to remedy and to cut up by the roots the abuses which, contrary to the laws of nations and contrary to what is expressly stipulated in the treaty of 1795, above cited, daily occur in some ports of this Union, in consequence of the vague and arbitrary interpretation which it seems the measures until now adopted are susceptible of, and by which the law is eluded.

No. 33.

Mr. J. Q. Adams to Don Luis de Onis.

[Extract.]

WASHINGTON, *October* 31, 1818.

Your letter of the 24th instant, and the proposals contained in it, offered as the basis of a treaty for the adjustment of all the subjects in

discussion between the United States and Spain, have been received and laid before the President of the United States.

The United States will agree to the proposal that the contracting parties shall mutually renounce all claims for damages or injuries which they, their citizens or subjects, have received from each other, until the date of the treaty; it being always understood that all grants of land in any part of the territories to be ceded by Spain to the United States, subsequent to the year 1802, are to be held null and void.

This renunciation on the part of the United States will be understood to extend—

1st. To all the cases of claims provided for by the convention of 1802.

2d. To all cases of claims, on account of captures by French privateers, and condemnations by French consuls, within the territorial jurisdiction of Spain.

3d. To all claims of indemnities, on account of the suspension of the right of deposit at New Orleans, in 1802.

4th. To all claims of citizens of the United States upon the government of Spain; statements of which, soliciting the interposition of the Government of the United States, shall have been, before the date of this treaty, and since the date of the convention of 1802, presented either to the Department of State of the United States, or to the minister of the United States in Spain; but not to claims which the individuals of the United States may have against those of Spain, or against the Spanish government, on any other account.

The United States will exonerate Spain from all demands in future on account of the above-mentioned claims; and undertake to make satisfaction for the same to an amount not exceeding $5,000,000.

To ascertain the full amount and validity of those claims, a commission, to consist of three commissioners, shall be appointed by the President of the United States, by and with the advice and consent of the Senate, which commission shall meet at Washington; and within the space of three years shall receive, examine, and decide upon the amount and validity of all claims coming within the descriptions above mentioned. And the Spanish government shall furnish all such documents and elucidations as may be in their possession, for the adjustment of the said claims according to the principles of justice, the said documents to be specified when demanded at the instance of the said commissioners.

Your fifth proposition is that the treaty of limits and navigation, of 1795, shall remain in force, in all and each of its articles, with the exception of that part of the fifteenth article which stipulates that the flag shall cover the property.

The second, third, fourth, twenty-first, and the second clause of the twenty-second article of the treaty of 1795, have either received their entire execution, and can no longer be considered as remaining in force, or have been rendered inoperative by subsequent events. Whatever relates in them to limits, or to the navigation of the Mississippi, has been extinguished by the cession of Louisiana to France, and by her to the United States; with the exception of the line between the United States and Florida, which will also be annulled by the cession of Florida, which you now propose. I am authorized to agree to the confirmation and recognition of all the remaining articles of that treaty, as still in force, and to assent to the exception proposed by you of the part of the fifteenth article, to this extent: that if hereafter either of the contracting parties shall be at war with a third party, and the other neutral,

the flag of the neutral shall cover the property of enemies whose governments recognize the same principle, and not of others.

Your sixth proposition is admissible. The United States do not know that any additional laws or declarations are necessary to secure the fulfillment, on the part of Spain, of her engagements in the treaty of 1795. Numerous and just as their complaints have been of the violations of that treaty, under the authority of Spain, they consider the Spanish government fully competent to make reparation for them, and to secure the faithful observance of their engagements in future, without new laws or declarations. Nor are they aware of any vague or arbitrary interpretation in any of the ports of this Union, by which, contrary to the law of nations, or to the stipulations of the treaty of 1795, the law is eluded. The interpretation or construction given to the stipulations of the treaty of 1795, within the United States, are subject to the decisions of the judicial tribunals of the United States, which are bound to consider all treaties as the supreme law of the land. Their proceedings are all public, and their decisions upon all questions of interpretation are recorded and published. In this there is surely nothing vague or arbitrary—nothing requiring new laws or declarations. Of the many complaints which you have addressed to this Govern-
[131] ment in relation to alleged transactions in our *ports, the deficiency has been, not in the meaning or interpretation of the treaty, but in the proof of the facts which you have stated, or which have been reported to you, to bring the cases of complaint within the scope of the stipulations of the treaty.

No. 34.

Don Luis de Onis to Mr. J. Q. Adams.

[Translation.—Extract.]

WASHINGTON, *November* 16, 1818.

My fourth proposal to your Government has for its object the renunciation by both governments and nations of all claims for spoliations, respectively suffered by either of the two powers or their subjects, until the signing of the treaty. This proposal has been admitted by your Government, with the exception of such claims as American citizens may have on the subjects of His Catholic Majesty, or on the Spanish government, and which have not been laid before the Department of State of the United States or their minister at the court of Spain. I have no hesitation in assenting to this exception, but it should be made reciprocal for the subjects of the Crown of Spain who may be entitled to claims on American citizens or on the Government of the United States, and which have not yet been presented in due form to His Majesty's secretary of state, or to his minister near the United States. My proposal will thus be free from difficulty, and conform to the modifications you have suggested.

Nor do I find any difficulty in agreeing to the modifications you offer to my fifth proposal; and proceeding to the sixth, the object of which is to remedy the abuses and violations, repeated pernicious examples of which have occurred in different ports of this republic, through the toleration and countenance given therein to piratical and privateering armaments against the commerce and navigation of Spain, I observe

you state that what I propose is inadmissible; but I have received orders from my sovereign to insist on this point, and to claim of your Government such measures as are imperiously called for by the very nature of these abuses and violations, as they not only contravene the existing treaty, but are in direct opposition to the most respectable compacts founded on international and public law.

Whatever may be the forecast, wisdom, and justice conspicuous in the laws of the United States, it is universally notorious that a system of pillage and aggression has been organized in several ports of the Union against the vessels and property of the Spanish nation; and it is equally so that all the legal suits hitherto instituted by His Catholic Majesty's consuls, in the courts of their respective districts, for its prevention or the recovery of the property, when brought into this country, have been, and still are, completely unavailing. The artifices and evasions by means of which the letter of the law has on these occasions been constantly eluded are sufficiently known, and even the combination of interests in persons who are well known, among whom are some holding public offices. With a view to afford you and the President more complete demonstration of the abuses, aggressions, and piracies alluded to, I inclose you correct lists, extracted from authentic documents deposited in the archives of this legation, exhibiting the number of privateers, or pirates, fitted out in the United States against Spain, and of the prizes brought by them into the ports of the Union, as well as of those sent to other ports, together with the result of the claims made by the Spanish consuls in the courts of this country. Among them you will find the case of two armed ships, the Horatio and Curiazo, built at New York, and detained by His Majesty's consul there, on the ground of their having on board thirty pieces of cannon concealed, with their carriages, and a crew of one hundred and sixty men. On which occasion it was pretended that it could not be proved that these guns were not an article of commerce, and they finally put to sea without them, the extraordinary number of officers and crew passing for passengers. The number of privateers, or pirates, fitted out and protected in the ports of this republic, as well as of the Spanish prizes made by them, far exceeds that contained in the within lists, but I only lay before your Government those of which I have certain and satisfactory proofs. The right of Spain to an adequate indemnity for all the spoliations committed by these privateers, or pirates, on the Crown and subjects of His Catholic Majesty, is undeniable; but I now submit it to your Government only to point out the extreme necessity of putting an end to these continued acts of hostility and depredation, and of cutting short these enormous and flagrant abuses and evils, by the adoption of such effectual precautions and remedies as will put it out of the power of cupidity or ingenuity to defeat or elude them. In vain should we endeavor amicably to settle and accommodate all existing differences, and thus establish peace and good understanding between the two nations, if the practice of these abuses, and the course of these hostilities and piracies on the commerce and navigation of Spain should, as heretofore, continue uninterrupted in the United States. From the tenor of the documents now inclosed, and of the reflections suggested by the very nature and state of things, the President cannot hesitate to assent to my proposal on this subject; and, as the Congress is now in session, I feel assured that the proper opportunity is afforded for the adoption of the necessary measures I have alluded to, and which I solicit as an essential basis of securing and maintaining a mutual friendship and good understanding between the two nations.

[132] * [Inclosure 1 in No. 34.]

List of vessels armed or equipped in the ports of the United States, or within their jurisdiction, agreeably to documents deposited in the archives of His Catholic Majesty's minister, under my charge, to wit:

Names of vessels.	Captains' names.	Ports of armament or equipment.	Destination.
Schooner L'Epine	Beligne	New Orleans	Gulf of Mexico.
Schooner Felix	Debray	do	Do.
Schooner Petit Milan	Amigory	do	Nautla.
Schooner Presidente	La Maison	do	Do.
Schooner La Guerrière, *alias* La Créole	Rartigne	do	
Pilot-boat La Couleuvre	Drouet	do	
Pilot-boat Joséphin	Domingue	do	
Schooner Alerta, *alias* General Morelos	Semet	Barrataria	Gulf of Mexico.
Schooner Jupiter		Charleston	Amelia Island.
Schooner Rebecca		do	Do.
Schooner Lovely Lydia	Hodson	Philadelphia	West Indies.
Schooner Hornet, *alias* Gernudis	John Smith	do	Atlantic.
Schooner Orb, *alias* Congreso de Buenos Ayres.	Joseph Almeyda	Baltimore	Coast of Spain.
Brig Calypso *alias* Calipsou	Thomas Boyle	do	Gulf of Mexico.
Brig Fourth of July, *alias* El Patriota	Thomas Taylor	do	Coast of Cuba.
Brig Paz, *alias* El Patriota	Joseph Stafford	do	Coast of Spain.
Brig Mammoth, of Baltimore, *alias* La Independencia del Sud	James Chaytor	do	Do.
Brig Clifton	Davy	do	Buenos Ayres.
Schooner Swift, *alias* Mongore	James Barnes	do	Coast of Spain.
Schooner Spartan, *alias* Potosi	John Chase	do	Do.
Brig Regent, *alias* Tupacamaro	Francis Mason	do	Do.
Schooner Romp, *alias* Santafecino	Fisk	do	Norfolk.
Schooner Felix Cubana, *alias* Aret	Revilla	do	Port-au-Prince.
Schooner Young Spartan	Moore	do	Straits of Bahama.
Brig True-blooded Yankee	David Tewet	New York	Savannah.
Schooner Capelin, *alias* Artegas, *alias* Minerva	Champlin	do	Unknown.
Corvette Horatio	Skinner	do	Buenos Ayres.
Corvette Curiazo	Delano	do	Do.

(Signed) LUIS DE ONIS.

WASHINGTON, *November* 16, 1818.

[Inclosure 2 in No. 34.]

List of Spanish vessels captured by pirates and brought into the United States, stating the result or actual state of the claims made for their restitution to the lawful owners, with the cargoes brought in by some of them.

Names of vessels.	Cargoes.	By whom captured.	Where arrived.	Issue or present state of claims.
Ship Alerta	153 slaves	L'Epine, privateer	New Orleans	Restored to the owners.
Polacre San Francisco de Paula	Wine, brandy, &c	Felix, privateer	do	Do.
Schooner Amable Maria	Nothing	Barataria, privateer	do	Do.
Schooner Cometa	do	do	do	Do.
Schooner Dorado	do	do	do	Do.
Schooner Caridad	do	do	do	These two vessels sold by orders of the admiralty court: proceeds ordered to be paid to the owners.
Schooner Bolivar	do	do	do	
Schooner Santa Rita	Colonial produce	do	do	Restored to the owners.
Ship Junta Central, *alias* Bruch	Nothing	Carthagena, privateer	do	The court declared its incompeteney to take cognizance; property retained by the pirates.
H. C. M.'s corvette Indagadora, *alias* Cary Mary	do	Decoyed on the Costa Firme	do	Do.
Polacre Regia	Quicksilver, public and private property.	Schooner Alerta	do	Amount of vessel and cargo ordered to be restored to the owners.
Ship Cleopatra	Wine, brandy, &c	Carthagena, privateer	do	The court declared its incompeteney to take cognizance; property retained by the pirates.
Schooner Alerta	Wine and specie	Barataria, privateer	do	Ordered to be restored to the owners.
Schooner Estrella	Unknown	do	do	Ordered to be restored, but still pending.
Polacre Virgen del Mar	do	Caraccas, privateer	do	Do.
Schooner San Felipe	do	Venezuela, privateer	do	Do.
Schooner San Antonio	32 slaves	do	do	Do.
Schooner Politana	169 slaves	Amelia, privateer	Savannah	Depending.
Brig Monserrat	Unknown	do	do	Do.
Brig Maria Francisca	Sugar	do	do	Do.
Brig Conception	Wine, &c	Commodore Champlin	do	Do.
Schooner Sirena	Unknown	do	do	Do.
San José Animas	do	Galveston, privateer	Charleston	Ordered to be restored to the owners.
Schooner Camila	do	do	do	Depending.
Schooner Isabelita	Nothing	Amelia, privateer	do	Ordered to be delivered to the owners.
Schooner Pilotina	Slaves	do	do	Depending.
Polacre brig La Cruz de Mayo	Salt, from Canaries	Brig Patriot, Taylor	Norfolk	Do.
Ship Providencia	Home commodities	Mongore, Barnes	do	Sold by order of the court; proceeds ordered to be paid to the owners.
Brig Serano	Sugar	Congreso, Almeyda	Baltimore	Depending.
Schooner Intrepida, *alias* La Leona	Nothing	do	New York	Do.
Schooner San Roman	Unknown	do	Providence, R. I	Do.
Polacre Divina Pastora	do	Mongore	Boston	Do.
Ship Industria, *alias* La Rafaela	do	Congreso, Almeyda	Portland	Do.

(Signed) LUIS DE ONIS.

WASHINGTON, *November* 16, 1818.

[133] *[Inclosure 3 in No. 34.]

Summary statement of money and property taken out of Spanish vessels known to have been brought into the United States in American vessels, and the privateers by which they were plundered; exhibiting the result or present state of the claims to obtain restitution thereof, to wit:

[Translation.]

At New Orleans—restoration of seventy slaves of the cargo of the bark Volador, clandestinely conveyed there by the piratical captors; claimed and obtained by Don Vincente Ordozoiti, of Pensacola.

At the same place—certain property found on board a vessel abandoned by the American troops to the Barataria pirates; claimed by Don Diego Morphy, vice-consul; ordered to be delivered to him.

At the same place—restoration of certain Spanish property brought there in the Petit-Milan privateer; claimed and obtained by the same consul.

At the same place—restoration of certain property brought there by the Presidente privateer; claimed and obtained by the same consul, for account of the lawful owners.

At the same place—restoration of thirteen casks of clothing brought there by the American brig Alonzo from Galveston, and two hundred and eighty-five pieces of Madras handkerchiefs; claimed by His Majesty's consul, Don Felips Fatio; both still pending.

Claim by the same consul of thirty boxes of sugar, brought to New Orleans from Galveston; result yet unknown.

Claim by the same, of sundry merchandise brought to New Orleans on board the Mount Vernon; not decided on.

At Charleston—claim of property saved from the Spanish prize-brig Jupiter, lost after capture by pirates at the entrance of that river; order for its restoration yet unknown.

In the year 1812, the Anglo-American privateer Revenge, Captain Butler, after having committed numerous acts of piracy, boarded, under English colors, the Spanish ship Iris, bound from Havana, or Carthagena, in South America, to Spain, with a cargo of $55,000 in specie, of provincial money, silver in bars, and other valuable articles. There exists almost positive proof that the captain of the Revenge, not satisfied with robbing the Spaniards of their money, endeavored to choke the pumps and sink the ship, with all the crew. The captain and some of the crew were arrested and confined in jail at Charleston; but, notwithstanding the satisfactory evidence produced by His Majesty's consul on the trial, he was liberated, and only a thousand and some odd dollars, found on board the privateer, recovered. Don Felipe Aldaytarriaga, agent for the Iris, had recourse afterward to the courts at Philadelphia, which confirmed the sentence of the court at Charleston, for the liberation of Captain Butler and his crew, freed the owners of the Revenge from all responsibility to the owners of the Iris, and even ordered the money found on board the Revenge to be restored to the crew. An official representation of this transaction was made to the President, but without effect.

Don Antonio Argoto Villalobos, consul at Charleston, and vested with full powers, claimed and obtained an attachment on 120 boxes of sugar, 55 barrels of coffee, and 4 packages of white wax, brought there by the Amelia Island pirates, through Saint Mary's, in Georgia, which claim is still pending.

Toward the close of the last year, the same consul, through the medium of an agent dispatched to St. Mary's, had an attachment laid on certain Spanish property brought there from Amelia Island, amounting to $100,000, among which was a quantity of snuff and cigars, public property, shipped on board the Spanish ship Union Carmelita, Captain Fs. Roura, captured by the insurgents; this case still pending.

At Norfolk—claim by Don Pablo Chacon, consul there, of money and property brought there by the privateer Potosi, *alias* the Spartan, of Baltimore, Captain John Chase, supposed to belong to the Spanish ship Ciencia, captured by the privateer on her passage from Havana to Cadiz; failed for want of evidence.

At the same place—claim by Don Antonio Argote Vallalobos, when consul there, of a large sum of money, and 87 ceroons of cochineal, mostly belonging to the Spanish vessels the Santander and the Sma. Trinidad, *alias* the Manso, captured by the privateers Independencia del Sud, and the Atrevida, *alias* the Romp, Captains Chayter and Grinnolds, on their passage from Vera Cruz to Havana; still pending.

At the same place—claim by Don Pablo Chacon, of the restitution of 193 ceroons of bark, 28 cases of extract of Brazil, and 13 bags of cotton, on board the Venezuela privateer the America Libre, *alias* the Neptuno, Captain Bernard, arrived from Margarita; restitution not obtained, as well from want of proof to identify the property as the refusal of the authorities at Norfolk to attach it, agreeably to the demand of the consul.

Don Pablo Chacon claimed and obtained an attachment on 47 boxes of white Havana

sugar, arrived at Norfolk on board the American schooner Atlantic, Captain Butler, from Port-au-Prince, the said sugar having been taken from on board the Spanish brig San Antonio, by the pirate called the Invincible; this suit still pending.

At Baltimore—claim by Don Pablo Chacon, when consul there, of the restitution of two cases of thread, two boxes of oil, and two cases of silks, declared to have been taken on the high seas, and two boxes of lace, brought in by the piratical schooner Mangore, Captain Barnes; failed for want of proof.

The American schooner Remittance, Captain Rogers, arrived at Baltimore from Port-au-Prince, with the following property taken by the pirate Potosi, Captain John Chase, from on board the Spanish ship Ciencia, captured on her voyage from Havana to
[134] Cadiz, namely: three cases of wrought plate, one of jewelry, thirty-three bundles of cochineal, three of jalap, and various other valuable articles; claim by Mr. Chacon of the restitution of this property to the lawful owners still pending.

At the same port of Baltimore, arrived the brig Hibernia, with several bags of cotton and some coffee on board, taken by the pirate Patrioto, Captain Thomas Taylor, from a Spanish boat going to Saint Jago de Cuba. Powers sent by the owners to a merchant at Baltimore, who lodged a claim without delay, but as yet obtained no decision in the case.

Into the same port of Baltimore the following property was brought on board the American schooner the Evening Post, Captain Williams, from Galveston, having been transshipped on board that vessel from the Spanish polacre Santa Maria, Captain José Fort y Blanch, captured by the pirate Patriota, Captain Stafford, to wit: 138 boxes of lump-sugar, 83 ditto white, 5 half-boxes of ditto, 9 packages of cotton, and 120 pieces of Campeachy wood. This property was immediately secreted by the consignee, Mr. John Laborde, and escaped the search of the consul, Don Joaquim Zamoramo, who took the necessary steps to have an attachment laid on it.

At the same port there arrived another schooner, the Amatea, Captain Forbes, from Galveston, with 54 boxes of white sugar, 73 ditto lump, and 359 hides, taken from on board the polacre Santa Maria, by the pirate Stafford, and consigned to the said John Laborde, who, in consequence of the dilatory proceeding of the marshal of the district, found time to secrete them and evade the attacement granted at the request of Mr. Consul Zamoramo.

The pirate Patriota, Captain Taylor, arrived in the Chesapeake, and privately landed about $22,000 in gold, together with five slaves, taken from on board the Spanish schooner San Miguel, Captain Juan Velasquez, bound from Maracaibo to Saint Jago de Cuba; and notwithstanding every exertion used by Don J. Zamoramo to discover the place of deposit of the money and slaves, his search proved fruitless.

The same pirate, the Patriota, commanded by Captain Stafford, attempted on another occasion of his arriving in the Chesapeake, privately to land 500 boxes of sugar, taken from on board the polacre Santa Maria; but was able to land only 45, which were seized and condemned by the custom-house at Baltimore. The efforts of the consul to stop the privateer Patriota were rendered abortive by the misconduct of the marshal of the district.

No. 35.

Proclamation of the President of the United States, promulgating the treaty of amity, settlement, and limits, between the United States and Spain, of the 22d February, 1819.—Washington, 22d February, 1821.

BY THE PRESIDENT OF THE UNITED STATES.

A PROCLAMATION.

Whereas a treaty of amity, settlement, and limits, between the United States of America and His Catholic Majesty, was concluded and signed between their plenipotentiaries, in this city, on the 22d day of February, in the year of our Lord 1819, which treaty, word for word, is as follows:

Treaty of 1819.

Treaty of amity, settlement, and limits, between the United States of America and His Catholic Majesty.

Tratado de amistad, arreglo de diferencias y limites, entre Su Magestad Católica y los Estados Unidos de America.

The United States of America

Deseando Su Magestad Católica

and His Catholic Majesty, desiring to consolidate, on a permanent basis, the friendship and good correspondence which happily prevails between the two parties, have determined to settle and terminate all their differences and pretensions by a treaty, which shall designate with precision the limits of their respective bordering territories in North America.

With this intention the President of the United States has furnished with their full powers John Quincy Adams, Secretary of State of the United States; and His Catholic Majesty has appointed the most excellent lord Don Luis de Onis, Gonsalez, Lopez y Vara, lord of the town of Rayaces, perpetual regidor of the corporation of the city of Salamanca, knight grand-cross of the Royal American Order of Isabella the Catholic, decorated with the lys of La Vendéa, knight pensioner of the royal and distinguished Spanish Order of Charles the Third, member of the supreme assembly of the said royal order, of the council of His Catholic Majesty, his secretary, with exercise of decrees, and his envoy extraordinary and minister plenipotentiary near the United States of America.

[135] *And the said plenipotentiaries, after having exchanged their powers, have agreed upon and concluded the following articles:

ARTICLE I.

There shall be a firm and inviolable peace and sincere friendship between the United States and their citizens, and His Catholic Majesty, his successors and subjects, without exception of persons or places.

ARTICLE II.

His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which

y los Estados Unidos de America consolidar de un modo permanente la buena correspondencia y amistad que felizmente reyna entre ambas partes, han resuelto transigir y términar todas sus diferencias y preténsiones por medio de un tratado, que fixe con precision los limites de sus respectivos y confinantes territorios en la America Septentrional.

Con esta mira han nombrado, Su Magestad Católica al excélentisimo Señor Don Luis de Onis, Gonsalez, Lopes y Vara, señor de la villa de Rayaces, regidor perpetuo del ayuntamiento de la ciudad de Salamanca, caballero gran cruz de la Real Orden Americana de Isabella Católica, y de la decoracion del lis de la Vendéa, caballero pensionista de la real y distinguida Orden Española de Carlos III, ministro vocal de la suprema asamblea de dicha real orden, de su consejo, su secretario con exercicio de decretos, y su enviado extraordinario y ministro plenipotenciario cerca de los Estados Unidos de America; y el Presidente de los Estados Unidos, á Don Juan Quincy Adams, Secretario de Estado de los mismos Estados Unidos.

Y ambos plenipotenciarios, despues de haver cangeado sus poderes, han ajustado y firmado los articulos siguientes:

ARTICULO I.

Habrá una paz solida, inviolable, y una amistad sincera entre Su Majestad Católica, sus sucesores y súbditos, y los Estados Unidos y sus ciudadanos, sin excepcion de personas ni lugares.

ARTICULO II.

Su Magestad Católica cede á los Estados Unidos, en toda propiedad y soberania, todos los territorios

belong to him situated to the eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks, and other buildings which are not private property, archives and documents which relate directly to the property and sovereignty of said provinces, are included in this article. The said archives and documents shall be left in possession of the commissaries or officers of the United States, duly authorized to receive them.

ARTICLE III.

The boundary-line between the two countries, west of the Mississippi, shall begin on the Gulf of Mexico, at the mouth of the river Sabine, in the sea, continuing north along the western bank of that river, to the 32d degree of latitude; thence, by a line due north, to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or Red River; then following the course of the Rio Roxo westward, to the degree of longitude 100 west from London and 23 from Washington; then crossing the said Red River, and running thence, by a line due north, to the river Arkansas, to its source, in latitude 42° north; and thence, by that parallel of latitude, to the South Sea; the whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the 1st of January, 1818. But if the source of the Arkansas River shall be found to fall north or south of latitude 42°, then the line shall run from the said source due south or north, as the case may be, till it meets the said parallel of latitude 42°, and thence, along the said parallel, to the South Sea: all the islands in the Sabine and the said Red and

que le pertenecen, situados al este del Misisipi, conocidos bajo el nombre de Florida Occidental y Florida Oriental. Son comprehendidos en este articulo las yslas adyacentes dependientes de dichas dos provincias, los citios, plazas publicas, terrenos valdios, edificios publicos, fortificaciones, casernas y otros edificios que no sean propiedad de algun individuo particular, los archivos y documentos directamente relativos á la propiedad y soberania de las mismas dos provincias. Dichos archivos y documentos se entregarán á los comisarios ó oficiales de los Estados Unidos debidamente autorizados para recibirlos.

ARTICULO III.

La linea divisoria entre los dos paises al occidente del Misisipi arrancará del Seno Mexicano en la embocadúra del rio Sabina en el mar, seguirá al norte por la orilla occidental de este rio hasta el grado 32 de latitud; desde allí, por una linea recta al norte, hasta el grado de latitud en que entra en el Rio Roxo de Natchitochez, (Red River,) y continuará, por el curso del Rio Roxo al oeste, hasta el grado 100 de longitud occidental de Londres y 23 de Washington, en que cortará este rio, y seguirá por una linea recta al norte, por el mismo grado, hasta el rio Arkansas, cuya orilla meridional seguirá hasta su nacimiento en el grado 42 de latitud septentrional; y desde dicho punto se terrará una linea recta por el mismo paralelo de latitud hasta el Mar del Sur. Todo segun el mapa de los Estados Unidos de Melish, publicado en Philadelphia y perficionado en 1818. Pero si el nacimiento del rio Arkansas se hallase el norte ó sur de dicho grado 42 de latitud, seguirá la linea desde el origen de dicho rio recta al sur ó norte, segun fuese necesario hasta que encuentre el expresado grado 42 de latitud, y desde allí por el mismo paralelo hasta el Mar del

Arkansas Rivers, throughout the course thus described, to belong to the United States; but the use of the waters and the navigation of the Sabine to the sea, and of the said rivers Roxo and Arkansas, throughout the extent of the said boundary, on their respective banks, shall be common to the respective inhabitants of both nations.

The two high contracting parties agree to cede and renounce all their rights, claims, and pretensions to the territories described by the said line, that is to say: "The United States hereby cede to His Catholic Majesty, and renounce forever, all their rights, claims, and pretensions to the territories lying west and south of the above-described line; and, in like manner, His Catholic Majesty cedes to the said United States all his rights, claims, and pretensions to any
[136] * territories east and north of the said line, and, for himself, his heirs, and successors, renounces all claim to the said territories forever.

ARTICLE IV.

To fix this line with more precision, and to place the land-marks which shall designate exactly the limits of both nations, each of the contracting parties shall appoint a commissioner and a surveyor, who shall meet before the termination of one year from the date of the ratification of this treaty, at Natchitoches on the Red River, and proceed to run and mark the said line, from the mouth of the Sabine to the Red River, and from the Red River to the river Arkansas, and to ascertain the latitude of the source of the said river Arkansas, in conformity to what is above agreed upon and stipulated, and the line of latitude 42 degrees to the South Sea. They shall make out plans, and keep journals of their proceedings, and the result agreed upon by

Sur. Pertenecerán á los Estados Unidos todas las yslas de los rios Sabina, Roxo de Natchitochez y Arkansas, en la extension de todo el curso descrito; pero el uso de las aguas y la navegacion del Sabina hasta el mar, y de los expresados rios Roxo y Arkansas en toda la extension de sus mencionados limites en sus respectivas orillas, será comun á los habitantes de las dos naciones.

Las dos altas partes contratantes convienen en ceder y renunciar todos sus derechos, reclamaciones y pretensiones sobre los territorios que se describen en esta linea, á saber: Su Magestad Católica renuncia y cede para siempre por si, y á nombre de sus herederos y sucesores, todos los derechos que tiene sobre los territorios al este y al norte de dicha linea; y los Estados Unidos en egual forma ceden á Su Magestad Católica, y renuncian, para siempre, todos sus derechos, reclamaciones y pretensiones á qualesquiera territorios situados al oeste y al sur de la misma linea arriba descrita.

ARTICULO IV.

Para fixar esta linea con mas precision y establecer los mojones que señalen con exactitud los limites de ambas naciones, nombrará cada una de ellas un comisario y un geómetra que se junterán antes del termino de un año, contado desde la fecha de la ratificacion de este tratado, en Natchitoches, en las orillas del Rio Roxo, y procederán á señalar y demarcar dicha linea, desde la embocadura del Sabina hasta el Rio Roxo, y de este hasta el rio Arkansas, y á averiguar con certidumbre el origen del expresado rio Arkansas, y fixar, segun queda estipulado y convenido en este tratado, la linea que debe seguir, desde el grado 42 de latitud hasta el Mar Pacifico. Llevarán diarios y levantarán planos de sus operaciones, y el resultado convenido por

them shall be considered as part of this treaty, and shall have the same force as if it were inserted therein. The two governments will amicably agree respecting the necessary articles to be furnished to those persons, and also to their respective escorts, should such be deemed necessary.

ellos se tendrá por parte de este tratado, y tendrá la misma fuerza que si estuviese inserto en el; deviendo convenir amistosamente los dos gobiernos en el arreglo de quanto necesiten estos individuos, y en la escolta respectiva que deban llevar, siempre que se crea necesaria.

Article V.

The inhabitants of the ceded territories shall be secured in the free exercise of their religion, without any restriction, and all those who may desire to remove to the Spanish dominions shall be permitted to sell or export their effects at any time whatever, without being subject, in either case, to duties.

Articulo V.

A los habitantes de todos los territorios cedidos se les conservará el exercicio libre de su religion, sin restriccion alguna; y á todos los que quisieren trasladarse á los dominios españoles se les permitirá la venta ó extraccion de sus efectos en qualquiera tiempo, sin que pueda exigirseles en uno ni otro casa derecho alguno.

Article VI.

The inhabitants of the territories which His Catholic Majesty cedes to the United States, by this treaty, shall be incorporated in the Union of the United States, as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights, and immunities of the citizens of the United States.

Articulo VI.

Los habitantes de los territorios que Su Magestad Católica cede por este tratado á los Estados Unidos serán incorporados en la Union de los mismos Estados, lo mas presto posible segun los principios de la Constitucion Federal, y admitidos al goce de todos los privilegios, derechos e inmunidades de que disfrutan los ciudadanos de los demas Estados.

Article VII.

The officers and troops of His Catholic Majesty, in the territories hereby ceded by him to the United States shall be withdrawn, and possession of the places occupied by them shall be given within six months after the exchange of the ratifications of this treaty, or sooner if possible, by the officers of His Catholic Majesty, to the commissioners or officers of the United States, duly appointed to receive them; and the United States shall furnish the transport and escort necessary to convey the Spanish officers and troops, and their baggage, to the Havana.

Articulo VII.

Los oficiales y tropas de Su Magestad Católica evacuarán los territorios cedidos á los Estados Unidos seis meses despues del cange de la ratificacion de este tratado, ó antes si fuese posible, y darán posesion de ellos á los oficiales ó comisarios de los Estados Unidos debidamente autorizados para recibirlos; y los Estados Unidos proveerán los transportes y escolta necesarios para llevar á la Habana los oficiales y tropas Españoles y sus equipages.

ARTICLE VIII.

All the grants of land made before the 24th of January, 1818, by His Catholic Majesty, or by his lawful authorities in the said territories, ceded by His Majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the territories had remained under the dominion of His
[137] Catholic *Majesty. But the owners in possession of such lands who, by reason of the recent circumstances of the Spanish nation, and the revolutions in Europe, have been prevented from fulfilling all the conditions of their grants, shall complete them within the terms limited in the same, respectively, from the date of this treaty; in default of which the said grants shall be null and void. All grants made since the 24th of January, 1818, when the first proposal, on the part of His Catholic Majesty, for the cession of the Floridas, was made, are hereby declared, and agreed to be, null and void.

ARTICULO VIII.

Todas las concesiones de terrenos hechas por Su Magestad Católica ó por sus legitimas autoridades antes del 24 de Enero de 1818, en los expresados territorios que Su Magestad cede á los Estados Unidos, quedarán ratificadas y reconocidas á las personas que esten en posesion de ellas, del mismo modo que lo serian si Su Magestad hubiese continuado en el dominio de estos territorios; pero los propietarios que, por un efecto de las circunstancias en que se ha hallado la nation española y, por las revoluciones de Europa, no hubiesen podido llenar todas las obligaciones de las conceciones, serán obligados á cumplirlas segun las condiciones de sus respectivas concesiones desde la fecha de este tratado; en defecto de lo qual serán nulas y de ningun valor. Todas las conceciones posteriores al 24 de Enero de 1818, en que fueron hechas las primeras proposiciones de parte de Su Magestad Católica, para la cesion de las dos Floridas, convienen y declaren las dos altas partes contratantes que quedan anuladas y de ningun valor.

ARTICLE IX.

The two high contracting parties, animated with the most earnest desire of conciliation, and with the object of putting an end to all the differences which have existed between them, and of confirming the good understanding which they wish to be forever maintained between them, reciprocally renounce all claims for damages or injuries which they themselves, as well as their respective citizens and subjects, may have suffered, until the signing of this treaty.

The renunciation of the United States will extend to all the injuries mentioned in the convention of the 11th of August, 1802.[1]

ARTICULO IX.

Las dos altas partes contratantes, animadas de los mas vivos deseos de conciliacion, y con el objeto de cortar de raiz todas las discusiones que han existido entre ellas, y afianzar la buena armonia que desean mantener perpetuamente, renuncian, una y otra reciprocamente, á todas las reclamaciones de daños y perjuicios que así ellas, como sus respectivos subditos y ciudadanos, hayan experimentado hasta el dia en que se firme este tratado.

La renuncia de los Estados Unidos se extiende á todos los perjuicios mencionados en el convenio de 11 de Agosto de 1802.

[1] A convention between His Catholic Majesty and the United States of America for the indemnification of those who have sustained losses, damages, or injuries in consequence of the excesses of individuals of either nation during the late war, contrary to the existing treaty or the laws of nations.

2. To all claims on account of prizes made by French privateers, and condemned by French consuls, within the territory and jurisdiction of Spain.

3. To all claims of indemnities on account of the suspension of the right of deposit at New Orleans in 1802.

4. To all claims of citizens of the United States upon the goverment of Spain arising from the unlawful seizures at sea, and in the ports and territories of Spain or the Spanish colonies.

5. To all claims of citizens of the United States upon the Spanish government, statements of which, soliciting the interposition of the Government of the United States, have been presented to the Department of State or to the minister of the United States in Spain since the date of the convention of 1802, and until the signature of this treaty.

The renunciation of His Catholic Majesty extends:

1. To all the injuries mentioned in the convention of the 11th of August, 1802.

2. To the sums which His Catholic Majesty advanced for the return of Captain Pike from the Provincias Internas.

3. To all injuries caused by the expedition of Miranda, that was fitted out and equipped at New York.

4. To all claims of Spanish subjects upon the Government of the United States arising from unlawful seizures at sea or within the ports and territorial jurisdiction of the United States.

Finally, to all the claims of subjects of His Catholic Majesty upon the Government of the United States in which the interposition of His Catholic Majesty's government has been solicited before the date of this treaty and since the date of the convention of 1802, or [138] which may have *been made

2. Á todas las reclamaciones de presas hechas por los corsarios franceses, y condenadas por los consules franceses dentro del territorio y jurisdiccion de España.

3. Á todas las reclamaciones de indemnizaciones por la suspension del derecho de deposito en Nueva Orleans en 1802.

4. Á todas las reclamaciones de los ciudadanos de los Estados Unidos contra el gobierno español, procedentes de presas y confiscaciones injustas, así en la mar como en los puertos y territorios de Su Magestad en España y sus colonias.

5. Á todas las reclamaciones de los ciudadanos de los Estados Unidos contra el gobierno de España, en que se haya reclamado la interposicion del gobierno de los Estados Unidos antes de la fecha de este tratado, y desde la fecha del convenio de 1802, ó presentadas al Departamento de Estado de esta República ó ministro de los Estados Unidos en España.

La renuncia de Su Magestad Católica se extiende:

1. Á todos los perjuicios mencionados en el convenio de 11 de Agosto de 1802.

2. Á las cantidades que suplió, para la vuelta del Capitan Pike, de las Provincias Internas.

3. Á los perjuicios causados por la expedicion de Miranda, armada y equipada en Nueva York.

4. Á todas las reclamaciones de los súbditos de Su Magestad Católica contra el Gobierno de los Estados Unidos, procedentes de presas y confiscaciones injustas así en la mar como en los puertos y territorios de los Estados Unidos.

5. Á todas las reclamaciones de los súbditos de Su Magestad Católica contra el Gobierno de los Estados Unidos, en que se haya reclamado la interposicion del gobierno de España antes de la fecha de este tratado, y desde la fecha del convenio de 1802, ó que hayan sido presentadas al departamento de estado de

to the department of foreign affairs of His Majesty, or to his minister in the United States.

And the high contracting parties respectively renounce all claim to indemnities for any of the recent events or transactions of their respective commanders and officers in the Floridas.

The United States will cause satisfaction to be made for the injuries, if any, which, by process of law, shall be established to have been suffered by the Spanish officers, and individual Spanish inhabitants, by the late operations of the American Army in Florida.

ARTICLE X.

The convention entered into between the two governments on the 11th of August, 1802, the ratifications of which were exchanged the 21st of December, 1818, is annulled.

ARTICLE XI.

The United States, exonerating Spain from all demands, in future, on account of the claims of their citizens to which the renunciations herein contained extend, and considering them entirely canceled, undertake to make satisfaction for the same to an amount not exceeding $5,000,000. To ascertain the full amount and validity of those claims, a commission, to consist of three commissioners, citizens of the United States, shall be appointed by the President, by and with the advice and consent of the Senate, which commission shall meet at the city of Washington and, within the space of three years from the time of their first meeting, shall receive, examine, and decide upon the amount and validity of all the claims included within the descriptions above mentioned. The said commissioners shall take an oath or affirmation, to be entered on the record of their proceedings, for the faithful and diligent discharge of their duties; and in case

Su Magestad ó á su ministro en los Estados Unidos.

Las altas partes contratantes renuncian reciprocamente todos sus derechos á indemnizaciones por qualquiera de los últimos acontecimientos y transacciones de sus respectivos comandantes y officiales en las Floridas.

Y los Estados Unidos satisfarán los perjuicios, si los hubiese habido, que los habitantes y oficiales españoles justifiquen legalmente haber sufrido por las operaciones del exercito americano en ellas.

ARTICULO X.

Queda anulado el convenio hecho entre los dos gobiernos en 11 de Agosto de 1802, cuyas ratificaciones fueron cangeadas en 21 de Diciembre de 1818.

ARTICULO XI.

Los Estados Unidos descargando á la España para lo sucesivo de todas las reclamaciones de sus ciudadanos á que se extienden las renuncias hechas en este tratado, y dandolas por enteramente canceladas, toman sobre si la satisfacion ó pago de todas ellas hasta la cantidad de 5,000,000 de pesos fuertes. El Señor Presidente nombrará, con consentimiento y aprobacion del Senado, una comision, compuesta de tres comisionados, ciudadanos de los Estados Unidos, para averiguar con certidumbre el importe total y justificacion de estas reclamaciones; la qual se reunirá en la ciudad de Washington, y en el espacio de tres años desde su reunion primera recibirá, examinará, y decidirá sobre el importe y justificacion de todas las reclamaciones arriba expresadas y descritas. Los dichos comisionados prestarán juramento, que se onatará en los quadernos de sus operaciones, para el desempeño fiel y eficaz de sus de-

of the death, sickness, or necessary absence of any such commissioner, his place may be supplied by the appointment as aforesaid, or by the President of the United States, during the recess of the Senate, of another commissioner in his stead.

The said commissioners shall be authorized to hear and examine, on oath, every question relative to the said claims, and to receive all suitable authentic testimony concerning the same. And the Spanish government shall furnish all such documents and elucidations as may be in their possession for the adjustment of the said claims according to the principles of justice, the laws of nations, and the stipulations of the treaty between the two parties of 27th October, 1795; the said documents to be specified when demanded at the instance of the said commissioners.

The payment of such claims as may be admitted and adjusted by the commissioners, or the major part of them, to an amount not exceeding $5,000,000, shall be made by the United States, either immediately at their Treasury or by the creation of stock bearing an interest of 6 per cent. per annum, payable from the proceeds of sales of public lands within the territories hereby ceded to the United States, or in such other manner as the Congress of the United States may prescribe by law.

The records of the proceedings of the said commissioners, together with the vouchers and
[139] *documents produced before them relative to the claims to be adjusted and decided upon by them, shall, after the close of their transactions, be deposited in the Department of State of the United States, and copies of them, or any part of them, shall be furnished to the Spanish government, if required, at the demand of the Spanish minister in the United States.

beres; y en caso de muerte, enfermedad ó ausencia precisa de alguno de ellos, será reemplazado del mismo modo, ó por el Señor Presidente de los Estados Unidos, en ausencia del Senado.

Los dichos comisionados se hallarán autorizados para oir y examinar bajo juramento qualquiera demanda relativa á dichas reclamaciones, y para recibir los testimonios autenticos y convenientes relativos á ellas. El gobierno español subministrará á todos aquellos documentos y aclaraciones que esten en su poder para el ajuste de las expresadas reclamaciones, segun los principios de justicia, el derecho de gentes y las estipulaciones del tratado entre las dos partes de 27 de Octubre de 1795; cuyos documentos se especificarán quando se pidan á instancia de dichos comisionados.

Los Estados Unidos pagarán aquellas reclamaciones que sean admitidas y ajustadas por los dichos comisionados, ó por la mayor parte de ellos, hasta la cantidad de 5,000,000 de pesos fuertes, sea inmediatamente en su Tesoreria, ó por medio de una creacion de fondos con el interés de un 6 por ciento al año, pagaderos de los productos de las ventas de los terrenos valdios en los territorios aquí cedidos á los Estados Unidos, ó de qualquiera otra manera que el Congreso de los Estados Unidos ordene por ley.

Se depositarán, despues de concluidas sus transacciones, en el Departamento de Estado de los Estados Unidos, los quadernos de las operaciones de los dichos comisionados, justamente con los documentos que se les presenten relativos á las reclamaciones que deben ajustar y decidir; y se entregarán copias de ellos, ó de parte de ellos, al gobierno español, y á peticion de su ministro en los Estados Unidos, si lo solicitase.

ARTICLE XII.

The treaty of limits and navigation of 1795 remains confirmed in all and each one of its articles, excepting the second, third, fourth, twenty-first, and the second clause of the twenty-second article, which, having been altered by this treaty, or having received their entire execution, are no longer valid.

With respect to the fifteenth article of the same treaty of friendship, limits, and navigation of 1795, in which it is stipulated that the flag shall cover the property, the two high contracting parties agree that this shall be so understood with respect to those powers who recognize this principle; but if either of the two contracting parties shall be at war with a third party, and the other neutral, the flag of the neutral shall cover the property of enemies whose government acknowledge this principle, and not of others.

ARTICULO XII.

El tratado de limites y navegacion de 1795 quede confirmado en todos y cada uno de sus articulos, excepto los Articulos II, III, IV, XXI, y la segunda clausula del XXII, que habiendo sido alterados por este tratado, ó cumplidos enteramente, no pueden tener valor alguno.

Con respecto al Articulo XV del mismo tratado de amistad, limites y navegacion de 1795, en que se estipula que la bandera cubre la propiedad, han convenido las dos altas partes contratantes en que esto se entienda asi con respecto á aquellas potencias que reconozcan este principio; pero que, si una de las dos partes contratantes estuviere en guerra con una tercera, y la otra neutral, la bandera de esta neutral cubrirá la propiedad de los enemigos, cuyo gobierno reconozca este principio, y no de otros.

ARTICLE XIII.

Both contracting parties, wishing to favor their mutual commerce, by affording in their ports every necessary assistance to their respective merchant vessels, have agreed that the sailors who shall desert from their vessels in the ports of the other, shall be arrested and delivered up, at the instance of the consul, who shall prove, nevertheless, that the deserters belong to the vessels that claim them, exhibiting the document that is customary in their nation; that is to say, the American consul in a Spanish port shall exhibit the document known by the name of "articles," and the Spanish consul in American ports the roll of the vessel; and if the name of the deserter or deserters who are claimed shall appear in the one or the other, they shall be arrested, held in custody, and delivered to the vessel to which they shall belong.

ARTICULO XIII.

Deseando ambas potencias contratantes favorecer el comercio reciproco, prestando cada una en sus puertos todos los auxilios convenientes á sus respectivos buques mercantes, han acordado en hacer prender y entregar los marineros que desierten de sus buques en los puertos de la otra, á instancia del consul, quien sin embargo deberá probar que los desertores pertenecen á los buques que los reclaman, manifestado el documento de costumbre en su nacion; esto es, que el consul español en puerto americano exhibirá el rol del buque, y el consul americano en puerto español el documento conocido bajo el nombre de "articles;" y constando en uno ú otro el nombre ó nombres del desertor ó desertores que se reclaman, se procederá al arresto, custodia y entrega al buque á que correspondan.

ARTICLE XIV.

The United States hereby certify that they have not received any compensation from France for the injuries they suffered from her privateers, consuls, and tribunals on the coasts and in the ports of Spain, for the satisfaction of which provision is made by this treaty; and they will present an authentic statement of the prizes made, and of their true value, that Spain may avail herself of the same, in such manner as she may deem just and proper.

ARTICULO XIV.

Los Estados Unidos certifican por el presente que no han recibido compensacion alguna de la Francia por los perjuicios que sufrieron de sus corsarios, consules y tribunales, en las costas y puertos de España para cuya satisfaccion se provée en este tratado, y presentarán una relacion justificada de las presas hechas, y de su verdadero valor, para que la España pueda servirse de ella en la manera que mas juzgue justo y conveniente.

ARTICLE XV.

The United States, to give to His Catholic Majesty a proof of their desire to cement the relations of amity subsisting between the two nations, and to favor the commerce of the subjects of His Catholic Majesty, agree that Spanish vessels, coming laden only with productions of Spanish growth or manufactures, directly from the ports of Spain, or of her colonies, shall be admitted, for the term of twelve years, to the ports of Pensacola and St. Augustine, in
[140] the *Floridas, without paying other or higher duties on their cargoes, or of tonnage, than will be paid by the vessels of the United States. During the said term no other nation shall enjoy the same privileges within the ceded territories. The twelve years shall commence three months after the exchange of the ratifications of this treaty.

ARTICULO XV.

Los Estados Unidos, para dar á Su Magestad Católica una prueba de sus deseos de cimentar las reclamaciones de amistad que existen entre las dos naciones, y de favorecer el comercio de los súbditos de Su Magestad Católica, convienen en que los buques españoles que vengan solo cargados de productos de sus frutos ó manufacturas directamente de los puertos de España, ó de sus colonias, sean admitidos por el espacio de doce años en los puertos de Pensacola y San Augustin de las Floridas sin pagar mas derechos por sus cargamentos, ni major derecho de tonelage, que el que paguen los buques de los Estados Unidos. Durante este tiempo ninguna nacion tendrá derecho á los mismos privilegios en los territorios cedidos. Los doce años empezaran á contarse tres meses despues de haberse cambiado las ratificaciones de este tratado.

ARTICLE XVI.

The present treaty shall be ratified in due form, by the contracting parties, and the ratifications shall be exchanged in six months from this time or sooner, if possible.

ARTICULO XVI.

El presente tratado será ratificado en debida forma por las partes contratantes, y las ratificaciones se cangearán en el espacio de seis meses desde esta fecha, ó mas pronto si es posible.

In witness whereof we, the underwritten plenipotentiaries of the

En fé de lo qual nosotros, los infrascritos plenipotenciarios de Su

United States of America, and of His Catholic Majesty, have signed, by virtue of our powers, the present treaty of amity, settlement, and limits, and have thereunto affixed our seals respectively.

Magestad Católica y de los Estados Unidos de America, hemos firmado, en virtud de nuestros poderes, el presente tratado de amistad, arreglo de diferencias, y limites, y le hemos puesto nuestros sellos respectivos.

Done at Washington this 22d day of February, 1819.

Hecho en Washington, á 22 de Febrero de 1819.

[L. S.] JOHN QUINCY ADAMS.
[L. S.] LUIS DE ONIS.

[L. S.] LUIS DE ONIS.
[L. S.] JOHN QUINCY ADAMS.

And whereas his said Catholic Majesty did, on the 24th day of October, in the year of our Lord 1820, ratify and confirm the said treaty, which ratification is in the words and of the tenor following:

Ferdinand the Seventh, by the grace of God and by the constitution of the Spanish monarchy, King of the Spains.

Whereas, on the 22d day of February, of the year 1819 last past, a treaty was concluded and signed in the city of Washington, between Don Luis de Onis, my envoy extraordinary and minister plenipotentiary, and John Quincy Adams, esq., Secretary of State of the United States of America, competently authorized by both parties, consisting of sixteen articles, which had for their object the arrangement of differences and of limits between both governments and their respective territories, which are of the following form and literal tenor:

Don Fernando Septimo, por la gracia de Dios y por la constitucion de la monarquia española, Rey de las Españas.

Por cuanto en el dia 22 de Febrero del año proximo pasado de 1819, se concluyó y firmó en la ciudad de Washington, entre Don Luis de Onis, mi enviado extraordinario y ministro plenipotenciario, y Don Juan Quincy Adams, Secretario de Estado de los Estados Unidos de America, autorizados competentemente por ambas partes, un tratado compuesto de diez y seis articulos, qui tiene por objeto el arreglo de diferencias y de limites entre ambos gobiernos y sus respectivos territorios, cuya forma y tenor literal es el siguiente:

[Here follows the above treaty, word for word.]

Therefore, having seen and examined the sixteen articles aforesaid, and having first obtained the consent and authority of the general cortes of the nation with respect to the cession mentioned and stipulated in the second and third articles, I approve and ratify all and every one of the articles referred to, and the clauses which are contained in them; and, in virtue of these presents, I approve and ratify them, promising, on the faith and word of a King, to execute and observe them, and cause them to be executed and observed entirely as if I myself had signed

Por tanto, habiendo visto y examinado los referidos diez y seis articulos, y habiendo precedido la anuencia y autorizacion de las cortes generales de la nacion por lo respectivo á la cesion que en los articulos II y III se menciona y estipula, he venido en aprobar y ratificar todos y cada uno de los referidos articulos y clausulas que en ellos se contiene; y en virtud de la presente los apruebo y ratifico, prometiendo, en fé y palabra de Rey, cumplirlos y observarlos, y hacer que se cumplan y observen enteramente como si yo mismo los hubiese firmado; sin que sirva de obstaculo

them; and that the circumstance of having exceeded the term of six months, fixed for the exchange of the ratifications in the sixteenth article, may afford no obstacle in any manner, it is my deliberate will that the present ratification be as valid and firm, and produce the same effects, as if it had been done within the determined period. Desirous at the same time of avoiding any doubt or ambiguity concerning the meaning of the eighth article of the said treaty, in respect to the date which is pointed out in it as the period for the confirma-
[141] tion of the grants of *lands in the Floridas, made by me, or by the competent authorities in my royal name, which point of date was fixed in the positive understanding of the three grants of land made in favor of the Duke of Alegon, the Count of Puñonrostro, and Don Pedro de Vargas, being annulled by its tenor, I think proper to declare that the said three grants have remained and do remain entirely annulled and invalid; and that neither of the three individuals mentioned, nor those who may have title or interest through them, can avail themselves of the said grants at any time, or in any manner; under which explicit declaration the said eighth article is to be understood as ratified. In the faith of all which I have commanded to dispatch these presents. Signed by my hand, sealed with my secret seal, and countersigned by the underwritten, my secretary of dispatch of state.

Given at Madrid the 24th of October, 1820.

FERNANDO.

(Countersigned)

EVARISTO PEREZ DE CASTRO.

en manera alguna la circumstancia de haber transcurrido el termino de los seis meses prefijados para el cange de las ratificaciones en el Articulo XVI, pues mi deliberada voluntad es que la presente ratificacion sea tan valida y subsistente y produzca los mismos efectos que si huviese sido hecha dentro del termino prefijedo. Yo deseando al mismo tiempo evitar qualquiera duda ó ambigüedad que pueda ofrecer el contenido del Articulo VIII del referido tratado, con motivo de la fecha que en el se señala como termino para la validacion de las concesiones de tierras en las Floridas, hechas por mí ó por las autoridades competentes en mi real nombre, á cuyo señalamiento de fecha se procedió en la positiva inteligencia de dejar anuladas por su tenor las tres concesiones de tierras hechas a favor del Duque de Alagon, Conde de Puñonrostro, y Don Pedro de Vargas, tengo á bien declarar que las referidas tres concesiones han quedado y quedan enteramente anuladas é invalidadas; sin que los tres individuos referidos, ni los que de estos tengan titulo ó causa, puedan aprovecharse de dichas concesiones en tiempo ni manera alguna; bajo cuya explicita declaracion se ha de entender ratificado el referido articulo VIII. En fé de todo lo cual mandé despachar la presente, firmada de mi mano, sellada con mi sello secreto, y refrendada por el infrascripto, mi secretario del despacho de estado.

Dada en Madrid á 24 de Octubre de 1820.

FERNANDO.

(Refren.)

EVARISTO PEREZ DE CASTRO.

And whereas the Senate of the United States did, on the 19th day of the present month, advise and consent to the ratification, on the part of these United States, of the said treaty, in the following words:

IN SENATE OF THE UNITED STATES, 19*th February*, 1821.

Resolved, (*two-thirds of the Senators present concurring therein*,) That the Senate, having examined the treaty of amity, settlement, and limits,

between the United States of America and His Catholic Majesty, made and concluded on the 22d of February, 1819, and seen and considered the ratification thereof, made by his said Catholic Majesty on the 24th day of October, 1820, do consent to, and advise the President of the United States to ratify the same.

And whereas, in pursuance of the said advice and consent of the Senate of the United States, I have ratified and confirmed the said treaty in the words following, viz:

Now, therefore, I, James Monroe, President of the United States of America, having seen and considered the treaty above recited, together with the ratification of His Catholic Majesty thereof, do, in pursuance of the aforesaid advice and consent of the Senate of the United States, by these presents, accept, ratify, and confirm the said treaty, and every clause and article thereof, as the same are hereinbefore set forth.

In faith whereof I have caused the seal of the United States of America to be hereto affixed.

Given under my hand at the city of Washington, this 22d day of February, in the year of our Lord 1821, and of the Independence of the United States the 45th.

(Signed) JAMES MONROE.

And whereas the said ratifications, on the part of the United States and of His Catholic Majesty, have been this day duly exchanged at Washington, by John Quincy Adams, Secretary of State of the United States, and by General Don Francisco Dionisio Vives, envoy extraordinary and minister plenipotentiary of His Catholic Majesty: Now, therefore, to the end that the said treaty may be observed and performed with good faith on the part of the United States, I have caused the premises to be made public; and I do hereby enjoin and require all persons bearing office, civil or military, within the United States, and all others, citizens or inhabitants thereof, or being within the same, faithfully to observe and fulfill the said treaty, and every clause and article thereof.

In testimony whereof I have caused the seal of the United States to be affixed to these presents, and signed the same with my hand.

Done at the city of Washington the 22d day of February, in the year of our Lord 1821, and of the sovereignty and Independence of the United States the 45th.

By the President:

(Signed) JOHN QUINCY ADAMS,
Secretary of State.

[143] *UNITED STATES AND PORTUGAL.

Number.	From whom and to whom.	Date.	Subject.	Geneva edition.	Second edition.
				Page.	*Page.*
1	The Chevalier de Serra to Mr. Monroe.	Dec. 20, 1816	Complains that the Romp, Swift, and other ships are fitted out in United States ports, with Buenos Ayres colors, to capture Portuguese ships. Demands that more stringent neutrality laws be proposed to Congress.	147	239
2	Mr. Monroe to the Chevalier de Serra.	Dec. 27, 1816	Copy of message of President to Congress proposing an extension of the executive power to preserve neutrality.	148	241
3	Mr. Rush to the Chevalier de Serra.	Mar. 13, 1817	Copy of act of Congress passed on the 3d instant, with the above object.	149	242
4	The Chevalier de Serra to Mr. Rush.	May 13, 1817	Requesting that United States officials at sea-ports may be ordered to exercise greater vigilance in preserving neutrality.	149	242
5	The Chevalier de Serra to Mr. J. Q. Adams.	Mar. 8, 1817	Asking for indemnification for capture of three Portuguese vessels by privateers under Buenos Ayres flag, fitted out in the United States, and manned by Americans.	149	243
6	Mr. J. Q. Adams to the Chevalier de Serra.	Mar. 14, 1817	The United States have done their best to prevent infractions of their neutrality, but do not consider themselves bound to indemnity foreigners for losses by captures at sea.	150	243
7	The Chevalier de Serra to Mr. J. Q. Adams.	Oct. 15, 1817	The Portuguese brig Soam Sexto, which was captured by the Baltimorean privateer Fortuna, is now fitting out as a privateer in the Patuxent.	150	244
8	Mr. J. Q. Adams to the Chevalier de Serra.	Oct. 23, 1817	If he will furnish evidence, the United States district attorney for Maryland shall institute suits against the persons complained of.	150	244
9	The Chevalier de Serra to Mr. J. Q. Adams.	Nov. 13, 1817	Requesting postponement of trial of persons accused of piracy, in order that he may complete his evidence.	151	245
10	.....do	Nov. 14, 1817	Difficulty of collecting evidence. Requests that Attorney-General may be instructed to act on what has already been procured.	151	245
11	Mr. J. Q. Adams to the Chevalier de Serra.	Nov. 18, 1817	Evidence may be transmitted to Attorney-General at Baltimore. Trial can only be postponed on production of very effective reasons.	152	246
12	The Chevalier de Serra to Mr. J. Q. Adams.	Dec. 11, 1817	The Irresistible or Vicuña, of Baltimore, is committing depredations on Portuguese commerce. Requests that she may be seized if she returns to the United States.	152	247
13	.....do	Feb. 4, 1819	Requests that the neutrality act of 1817, which expires on 3d March next, may be continued in force.	152	247
14	Mr. J. Q. Adams to the Chevalier de Serra.	Feb. 9, 1819	The provisions of the act of 1817 have since been re-enacted.	153	248
15	The Chevalier de Serra to Mr. J. Q. Adams.	Mar. 17, 1819	Requesting that the Artigan flag, which has not a foot of sea-shore in South America, may be declared unlawful.	153	248
16	Mr. J. Q. Adams to the Chevalier de Serra.	Apr. 22, 1819	John Daniels, commander of the Irresistible, has returned to Baltimore, and shall be prosecuted if evidence against him is furnished.	154	251
17	The Chevalier de Serra to Mr. J. Q. Adams.	Nov. 23, 1819	Depredations by citizens of United States on Portuguese commerce are increasing, and require active measures of repression. Is going to Brazil on leave.	155	251

No.	From whom and to whom.	Date.	Subject.	Geneva edition.	Second edition.
				Page.	*Page.*
18	The Chevalier de Serra to Mr. J. Q. Adams.	June 4, 1820	Satisfaction at law prohibiting the entrance of privateers into United States ports, and that declaring outrages on foreign lands to be piracy.	155	253
19	.....do.....	June 8, 1820	Requesting that the fitting out of the Artigan privateer Montalegre may be stopped.	156	253
20	[146] do.....	July 16, 1820	Suggesting the appointment of a commission to settle the damages due for nineteen Portuguese ships captured by cruisers fitted out in the United States.	156	254
21	Mr. J. Q. Adams to the Chevalier de Serra.	July 20, 1820	Measures have been taken in the case of the Montalegre to maintain inviolate the laws of the United States.	157	255
22	The Chevalier de Serra to Mr. J. Q. Adams.	Aug. 26, 1820	Sending names of officers of the United States Navy who served on board the General Artigas.	157	255
23	Mr. J. Q. Adams to the Chevalier de Serra.	Sept. 30, 1820	The President declines to appoint a commission, as the ordinary tribunals of the United State are sufficient. United States Government are not responsible for acts of their citizens, committed out of their jurisdiction. Requests evidence against any United States officers or judges.	157	256
24	The Chevalier de Serra to Mr. J. Q. Adams.	Nov. 9, 1820	Has referred the above note to his government. Is leaving the country.	158	257
25	The Chevalier A. Grehon to Mr. J. Q. Adams.	Dec. 4, 1820	The Portuguese packet Infant Dom Sebastiano pillaged by an American pirate.	158	257
26	.....do.....	Dec. 14, 1820	Particulars of twelve further claims against pirates.	159	258
27	.....do.....	Apr. 1, 1822	Portuguese government is willing to make a commercial treaty with the United States if a joint claims commission be established. If an indemnity be not granted, Portugal must resort to reprisals by granting exclusive commercial favors to other nations.	159	260
28	Mr. J. Q. Adams to the Chevalier A. Grehon.	Apr. 30, 1822	Demand for a commission cannot be acceded to, as the United States are not responsible for acts committed beyond their control. They do not seek exclusive commercial favors.	160	261
29	The Chevalier A. Grehon to Mr. J. Q. Adams.	May 1, 1822	Meaning of expression "common enemies of their industry and of their independence."	161	263
30	Mr. Adams to General Dearborn.	June 25, 1822	Instructions on his appointment as envoy to Portugal. Reasons for refusing the proposal for a commission. To act in a conciliatory manner.	161	263
31	Senhor de Figanière e Morão to Mr. Clayton.	May 25, 1850	Renewing the proposal for the appointment of a joint commission to settle the Portuguese claims on the United States.	163	266
32	Mr. Clayton to Senhor de Figanière e Morão.	May 30, 1850	Surprise at the re-appearance of these obsolete claims. Declines re-opening the proposed discussion.	163	267
33	Senhor de Figanière e Morão to Mr. Clayton.	June 6, 1850	Offers to refer all claims between the two countries to the arbitration of a third power.	164	268
34	Senhor de Figanière e Morão to Mr. Webster.	Nov. 7, 1850	Statement in support of Portuguese claims arising out of captures by privateers fitted out in the United States, owing to want of diligence on the part of the United States authorities. Again urging the appointment of commissioners to settle them.	165	269

CORRESPONDENCE BETWEEN THE UNITED STATES AND PORTUGAL RELATIVE TO CLAIMS OF PORTUGUESE SUBJECTS AGAINST THE UNITED STATES, 1816–'51.

No. 1.

The Chevalier de Serra to Mr. Monroe.

WASHINGTON, *December* 20, 1816.

SIR: A faithful copy has been taken, at my request, of a paper delivered to the Hon. St. George Tucker, district judge of the United States for the district of Virginia, on the demand thereof by him of Thomas Nelson, collector of the port of New York. This paper purports to be instructions given by Thomas Taylor, of Baltimore, under the authority of the persons who have assumed the powers of government in Buenos Ayres, to the ship Romp, Captain Fisk, to act as a privateer against the subjects of Spain. That respectable monarchy being in direct intercourse with the United States, and having near them their own proper representative, no occasion would exist for my official interference (notwithstanding the old and recent ties that unite the two royal families) if Mr. Taylor had not directed Captain Fisk, in the same instructions, to act in the like manner against the subjects of my sovereign, in case His Majesty be at war with the above self-styled government of Buenos Ayres.

Mr. Taylor, of Baltimore, is an American citizen; the ship Romp was an American ship, no doubt only fictitiously alienated, since the captain continued the same, and the bulk of the crew remained composed of American citizens. The privateer, it is true, did not attack any Portuguese vessel, but he was directed to do so conditionally by order and under the signature of an American citizen, who dares in his instructions to assign seven ports of the United States for the privateer to bring in his prizes, and named in each of them the agents who will take care of them.

It is certainly my duty not to wait silently and tamely for the perpetration of such an act; inasmuch as exertions of the same or similar nature continue to be made in the same place, by the same set of individuals, as it appears by the following facts, which are the result of my special inquiries, and I have the honor to present for your consideration.

The 18th of last month, (November,) the frigate Clifton, Captain Davey, armed with 32 guns of various calibers, and a crew of 200 men, sailed from Baltimore to Buenos Ayres. This ship laid anchor below that port, where it has remained about a fortnight or more, waiting for the American ship Independence of the South, armed with 16 guns, and for the ships Romp, Tuckahoe, Montezuma, and Spanker, and two others newly constructed, which were fitting with great activity and which had not yet got names. All were to sail together to cruise in the eastern and western seas of South America, under the insurgent colors of

Buenos Ayres. No doubt can be entertained of their instructions being the same as those of Captain Fisk, and that they will act hostilely against Portuguese ships. Besides private information on which I can rely, the mere fact of assuming such colors is in the present state of things equal to a direct proof.

There is good foundation to believe that nearly the same was the case of the ship Swift, Captain Huffington, which sailed from Baltimore the 3d of last August, with the ostensible designation for the Havana, armed with 14 guns, and a crew of 140 men, and the ship Maria, Captain Hafford, which left the same port the 25th of the same month, armed, and with a large crew. Both are understood to have displayed at sea Buenos Ayres colors, and most likely with the same instructions as Captain Fisk.

These armaments, sir, are carried on in the port of Baltimore, in a barefaced way, only such a very thin veil put on them, which has been deemed by some sufficient to screen the culprits from the effect of the actual insufficient laws. It is not only from information I speak, but twice I have lately been in Baltimore, and have personally ascertained the progress and nature of this business.

Such facts need no epithets to be qualified, and I have judged superfluous the use of them; they show at first sight their immoral and criminal nature, and their opposition to the laws of nations. I know too perfectly the honorable feelings, both of this government and [148] of this nation, to harbor the *least suspicion that they view these acts in any other light. The fault is entirely in the insufficiency of the existing laws and the many evasions they afford to guilty persons, particularly if assisted by chicanery. Perhaps the past American legislators provided so imperfectly for such occurrences, because they believed them impossible.

But since they come to happen, nothing but the enactment of new laws sufficient for the emergency can justify this nation in the eyes of the civilized world. If the citizens of the United States are not prevented by the laws of their country from becoming in masses acting parties in wars which are not their own, will not that give of course to this nation a piratical, odious character and complexion, unworthy of her in the eyes of foreign nations? Her peace and tranquillity would also be endangered, because any government so injured has a natural right to resent and repay, to the utmost of her power, injuries sustained, so much against the usages of the civilized world. Must, then, the honor and peace of the American people—of 9,000,000 of individuals, the immense majority of whom, to my perfect knowledge, bear an honest, honorable, pacific character—be put in jeopardy by the culpable covetousness of a few men in a sea-port or other place, who, to acquire fortunes, do not scruple to become pirates? privateering being in fact no better, when practiced in any other but each man's own country's wars.

I apply, therefore, to this Government, in the present instance, not to raise altercations or to require satisfaction which the Constitution of the United States has not perhaps enabled them to give; because I know that the supreme Executive of this nation, all-powerful when supported by law, is constitutionally inactive when unsupported by it. What I solicit of him is the proposition to Congress of such provisions by law as will prevent such attempts for the future. I am persuaded that my magnanimous sovereign will receive a more dignified satisfaction, and worthier of his high character, by the enactment of such laws by the United States, which, insuring the respect due to his flag for the future, would show their regard for His Majesty, that in the punishment of

a few obscure offenders, (even if attainable,) who, disowned as they are by the United States, may, no doubt, if they take any unwarrantable liberty with the property of His Majesty's subjects, meet the fate every honest mind wishes to them, and serve as examples and warning to those who in future may feel piratical dispositions. I rely on the President's wisdom—and the wish I am sure he must feel of putting an end to these shameful practices—that he will take the proper measures to have my just requisition fulfilled.

As, by the powerful reason alleged in the beginning, I confine myself strictly within the limits of my powers and the claims of my sovereign, I take this occasion of recalling to this Government the friendly and noble conduct of His Majesty during their late contest with Great Britain. Though their adversary was his most constant and effectual ally, who had readily come to assist him to repel a lawless invasion, and they were then fighting together the common enemy, His Majesty forbade his subjects to take any part in the quarrel, and ordered a strict neutrality to be observed, which in no single instance was broken either by his officers or his subjects. The enactment, therefore, by Congress, of such laws, would be but a just requital from them towards a generous, equitable monarch, declaredly in a state of amity with the United States.

I am, &c.,
(Signed) JOSEPH CORREA DE SERRA.

No. 2.

Mr. Monroe to the Chevalier de Serra.

WASHINGTON, *December* 27, 1816.

SIR: I have had the honor to receive your letter of the 20th instant, complaining of certain equipments of armed vessels from Baltimore, and of instructions given to the commander of one of those vessels to attack conditionally the vessels of your sovereign the King of Portugal and Brazil. You are aware that these vessels are equipped without any authority from this Government, and on pretexts very different from those which you assign. You are also aware that the existing laws do not authorize the President to interfere in such cases, and it is your object to obtain such amendment of them as may be sufficient for the purpose.

I have communicated your letter to the President, and have now the honor to transmit to you a copy of a message which he has addressed to Congress on the subject, with a view to obtain such an extension, by law, of the executive power, as will be necessary to preserve the strict neutrality of the United States in the existing war between Spain and the Spanish colonies, and effectually to guard against the danger in regard to the vessels of your sovereign, which you have anticipated.

As soon as a law may be passed on the subject, I shall have the honor of communicating it to you, and I avail myself of this opportunity of assuring you of the great interest which the President takes in cultivating the most kindly relations with your sovereign, his subjects, and dominions.

I have, &c.,
(Signed) JAMES MONROE.

[149] *No. 3.

Mr. Rush to the Chevalier de Serra.

WASHINGTON, *March* 13, 1817.

SIR: The act of Congress passed the 3d of this month, to preserve more effectually the neutral relations of the United States, being upon the subject brought under consideration in your letter to this Department of the 20th of December last, I have the honor, by direction of the President, to transmit for your information the inclosed copy of it.

The President feels sure that your sovereign will perceive, in the spirit and scope of its provisions, a distinguished proof of the desire which animates this nation to maintain with its dominions and subjects the most harmonious relations.

I have, &c.,

(Signed) RICHARD RUSH.

No. 4.

The Chevalier de Serra to Mr. Rush.

WASHINGTON, *May* 13, 1817.

SIR: Thoroughly convinced as I am of the upright and dignified principles of the President, and of the sound maxims on which the actual Government of the United States is proceeding, I cannot harbor the least uneasiness about the line of conduct which they will follow in the threatened case of the arrival of any adventurer who may style himself accredited agent of the rebels of Pernambuco. But you will easily agree that I cannot nor ought to entertain any degree of security about the conduct which the greedy and immoral part of your commercial citizens, particularly in Baltimore and New York, (with whom your Government has had already so many reasons of being dissatisfied,) will pursue in the actual unfortunate circumstances. Providentially, the law passed in the last session of Congress obviates great part of the evils which could be feared from people of this description, and I no doubt will zealously avail myself of the means it affords of serving the interests of my sovereign. I must represent, however, to this Government that the lukewarm acts of some of the United States officers in the sea-ports in past occurrences of a like nature do not give me that full confidence in them that I could wish to have. I am persuaded, therefore, that if the President was pleased to have them put in mind of the vigilance he requires from them in order to answer his own feelings on this subject, such a step would avoid negligence on their part, and continue uninterrupted the good harmony between Portugal and the United States which will always be the chief aim of my endeavors, as it is also the fond wish of my government.

I remain, &c.,

(Signed) JOSEPH CORREA DE SERRA.

No. 5.

The Chevalier de Serra to Mr. J. Q. Adams.

WASHINGTON, *March* 8, 1818.

SIR: I am ordered to lay before the eyes of this Government the case of three Portuguese ships, captured by privateers fitted in the United States, manned by American crews, and commanded by American captains, though under insurgent colors. An extract of the documents that prove these facts I have the honor of inclosing in the annexed paper. The documents themselves are at your disposition when required.

His Majesty's government has already said, in the official note of the 19th of March last, directed to the honorable Mr. Sumpter, about the first of these captures, that the perfect amity which His Majesty entertained for the United States, and his wish of further entertaining it, persuaded him that this Government would be willing to give satisfaction and indemnification for this injury done to his subjects and insult offered to his flag by these unworthy American citizens. It remains nothing for me to add than to express my perfect reliance in the justice and wisdom of this Government, and in the principles acknowledged by him on former occasions.

I am, &c.,

(Signed) JOSEPH CORREA DE SERRA.

[Inclosure in No. 5.]

List of Portuguese prizes.

1. Yacht Senhor de Alivio, going from Madeira to St. Michael; taken the 19th December, 1816, in latitude 33°, longitude 17° west of Lisbon, by a privateer-schooner of 110 tons, manned by sixty men, all Americans except two. This privateer was from Baltimore, and took another Portuguese prize, about which I have no documents.

[150] *2. Galley Marquis of Pombal, going from Pernambuco to Porto; taken the 26th of March, 1817, in latitude 38° 30′, longitude 36° west of London, by the privateer Buenos Ayres Patriot, Captain J. W. Stephen, of Baltimore; all the crew, composed of 112 men, were Americans, one excepted.

3. Brig St. John Protector, going from Bahia to Lisbon: captured the 13th of ——, 1817, in latitude 38°, longitude 11° 30′ west of London. It seems, from the numerous depositions, to have been captured by the same privateer, the Buenos Ayres Patriot, Captain S. W. Stephen. From two of the depositions it appears that the intention of the privateer was to send the prize to St. Domingo.

No. 6.

Mr. J. Q. Adams to the Chevalier de Serra.

WASHINGTON, *March* 14, 1818.

SIR: Your letter of the 8th instant, complaining of the capture of three Portuguese ships by privateers said to be fitted out in the United States, manned by American captains, though under colors other than those of the United States, has been received.

The Government of the United States having used all the means in its power to prevent the fitting out and arming of vessels in their ports

to cruise against any nation with whom they are at peace, and having faithfully carried into execution the laws enacted to preserve inviolate the neutral and pacific obligations of this Union, cannot consider itself bound to indemnify individual foreigners for losses by captures over which the United States have neither control nor jurisdiction. For such events no nation can in principle, nor does in practice, hold itself responsible. A decisive reason for this, if there were no other, is the inability to provide a tribunal before which the facts can be proved.

The documents to which you refer must of course be *ex parte* statements, which, in Portugal or in Brazil, as well as in this country, could only serve as a foundation for actions in damages, or for the prosecution and trial of the persons supposed to have committed the depredations and outrages alleged in them. Should the parties come within the jurisdiction of the United States, there are courts of admiralty competent to ascertain the facts upon litigation between them, to punish the outrages which may be duly proved, and to restore the property to its rightful owners, should it also be brought within our jurisdiction and found upon judicial inquiry to have been taken in the manner represented by your letter. By the universal laws of nations the obligations of the American Government extend no further.

Be pleased, &c.,

(Signed) JOHN Q. ADAMS.

No. 7.

The Chevalier de Serra to Mr. J. Q. Adams.

WASHINGTON, *October* 15, 1818.

SIR: This very moment I receive the intelligence that a ship is fitting in the Patuxent to cruise against the Portuguese commerce, and the ship so fitting is no other than the Portuguese fine brig Soam Sexto, taken some weeks before by the Baltimorean privateer Fortuna, sent into Beaufort, North Carolina, and the goods shipped for New York and Baltimore, where they are under reclamation. Captain Taylor left Baltimore on Sunday to take charge of her, and the night before the last a great deal of stores left Baltimore for this ship.

You know perfectly to what extent the supreme Executive can exert his power to prevent such a breach of all moral and international law, and I dare not doubt that it will be exerted, persuaded as I am of the honorable feelings of this Government.

I am, &c.,

(Signed) JOSEPH CORREA DE SERRA.

P. S.—There exist now in Baltimore many persons who are able to identify the ship.

No. 8.

Mr. J. Q. Adams to the Chevalier de Serra.

WASHINGTON, *October* 23, 1818.

SIR: I have had the honor of receiving, and have laid before the President of the United States, your letter of the 15th instant. I am

directed by him to inform you that, if you will furnish a list of the names of the persons chargeable with a violation of the laws of the United States, in fitting out and arming a vessel within the United States, for the purpose of cruising against the subjects of your sovereign, and of the witnesses by whose testimony the charge can be substan-
[151] tiated, directions will be *given to the attorney of the United States for the district of Maryland to institute suits against the persons complained of, in the proper court competent to their trial.

I pray you, &c.,

(Signed) JOHN Q. ADAMS.

No. 9.

The Chevalier de Serra to Mr. J. Q. Adams.

WASHINGTON, *November* 13, 1818.

SIR: I am just now informed that the grand jury of Baltimore must have found a true libel against the persons accused of piracy. In the present moment the evidence which is collecting against them is not yet ready, though in great forwardness. It is of the interest both of this Government and mine that the trial be put off till the proper evidence be collected. I am also informed, by a good legal authority, that this can be lawfully done on a proper application, which I am now making, but, by advice of the same, I apply also to this Government, who being a party, from the justice of its sentiments, interested in this prosecution, can require this necessary delay of the trial, with a much superior efficacy.

Accept, &c.,

(Signed) JOSEPH CORREA DE SERRA.

No. 10.

The Chevalier de Serra to Mr. J. Q. Adams.

WASHINGTON, *November* 14, 1818.

SIR: You will excuse the quick succession of my notes. It is not my intention to importunate you, but it is the fault of the events.

Obliged by my duty to inquire into the nature of the armed ships that have of late insulted the flag of my sovereign, and committed incalculable depredations on the property of his subjects, I have found with sorrow multiplied proofs that many of them are owned by citizens of the United States; have been fitted in ports of the Union; and many of them have either smuggled into this country the goods so stolen from a nation in full peace and friendship with the United States, or entered the captured ships and cargoes by unlawful means in several ports of the Union.

I am in duty bound to carry such facts before the courts of justice which your constitution has provided. But I am alarmed at the thick crowd of individuals who are engaged in this iniquitous business. Not only those who may be supposed to partake direc'ly and indirectly in the plunder, and their friends, but also a vast number of people oth-

erwise honest, who have the misfortune of believing that they do a meritorious act in supporting foreign insurrections, and are thought by some newspapers to look on these robberies as patriotic and praiseworthy. This last class of persons, widely spread everywhere—many of them having it in their power to help the delinquents some way or other—oppose great difficulties to every prosecution instituted by a foreign minister.

Great care, I see, has been taken to intercept the notice of such facts from the knowledge of the supreme Executive of this nation, who, as the natural guardian both of the execution of the existing laws and of the national honor, would undoubtedly, if they had reached this knowledge in a decisive light, employ all the powers with which the Constitution invests him to support both these objects committed to his care.

The honorable earnestness with which the President, in your answer of the 23d October last (to my representation about the ship fitting in the Patuxent) offered to have the delinquent prosecuted by the Federal courts, in case the evidence was sufficient, gives me a firm reliance in the nature of his sentiments on this subject, and to them I confidently have now recourse.

I beg, therefore, the President would be pleased to give directions to the Attorney-General of the United States to lay hold, in his ministerial capacity, of the depositions, witnesses, and *indicia* that I have collected to act in the public name in proportion as they are strong and valid. I would be very happy to put them all thus in his hands, with the certainty that they would have all the effect due to their respective merit, and that no extrinsic difficulties would be felt in the legal proceedings. By this means, also, I believe the national character, which the delinquents of whom I complain have attempted to impair, would appear in the face of the world in all the luster it deserves.

As soon as I am certified of the President's will I shall hasten to put all these documents in the hands of the Attorney-General.

Accept, &c.,

(Signed) JOSEPH CORREA DE SERRA.

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[152] *No. 11.

Mr. J. Q. Adams to the Chevalier de Serra.

WASHINGTON, *November* 18, 1818.

SIR: I have the honor of receiving your letters of the 13th and 14th instant, and am directed by the President to inform you that the Attorney-General of the United States is already at Baltimore engaged in support of the prosecution of the indictments which have been found by the grand jury there, before the circuit court of the United States, and that all the documents in your hands, and to which your letter of the 14th instant refers, may, if you think proper, be transmitted to him. The postponement of trial upon a criminal prosecution operates with so much hardship upon the party accused that it is rarely granted by our courts, and not without the assignment of very effective reasons, as well why the evidence expected to be produced has not been obtained, as arising from the character of the evidence itself and the bearing which it would have on the case if produced. Should such reasons in the present instance exist, they may be made known by the prosecutors at

Baltimore to the Attorney-General and district attorney, who will not fail to urge them to the court.

Be pleased, &c.,

(Signed) JOHN QUINCY ADAMS.

No. 12.

The Chevalier de Serra to Mr. J. Q. Adams.

WASHINGTON, *December* 11, 1818.

SIR: In obedience to the precise orders of my sovereign, I must put in the presence of the Government of the United States, that the armed vessel Irresistible, under the so-called Artigan colors, has been committing depredations and unwarrantable outrages on the coast of Brazil. According to the uniform depositions of a great number of persons who, for different lapses of time were on board of the above vessel, and were afterward landed on the Brazilian coast, it is proved that John Daniels, the commander of said ship, is of Baltimore, and the crew are all Americans. No doubt the chance of meeting chastising forces exposes him and his crew to feel the consequences of the violation of the law of nations; but, in the same time, as there is a certainty of this captain and ship coming to some port of the United States as they have been used to do from time to time, His Majesty confidently expects, from the good friendship existing between him and this Government, that such occasion may be watched, in order to bring the said captain and crew under the reach of the laws that punish such scandalous proceedings.

Ulterior intelligence gives the information that Captain Daniels has changed the name of his ship, and calls it now the General Artigas, but the name of the ship is immaterial, because it more than once has been changed. It is always originally the Vicuna, of Baltimore, Captain John Daniels.

Be pleased, &c.,

(Signed) JOSEPH CORREA DE SERRA.

No. 13.

The Chevalier de Serra to Mr. J. Q. Adams.

WASHINGTON, *February* 4, 1819.

SIR: I have the honor of representing to this Government that the law of the second session of the Fourteenth Congress, entitled "An act more effectually to preserve the neutral relations of the United States," sanctioned by the supreme Executive the 3d March, 1817, (which is the 38th chapter of the laws of that session,) expires the 3d of March of the present year, 1819.

This law, so honorable to the spirit of justice of the Government that enacted it, has also been found in practice the most useful of the laws existing on this subject. Unhappily the continuance and recent aggravations of the evil it was intended to remedy seem to render it necessary that this law may still continue in force for some time.

I apply, therefore, to this Government, in order to obtain the continuance of this law so necessary to the peaceful trade of the subjects of my sovereign and so honorable to the character of the United States, perfectly confident that my request is according to the just and friendly intentions of the Chief Magistrate and legislators of the Union, and conductive to the consolidation of good harmony between my sovereign and the United States.

Accept, &c.,
(Signed) JOSEPH CORREA DE SERRA.

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[153] *No. 14.

Mr. J. Q. Adams to the Chevalier de Serra.

WASHINGTON, *February* 9, 1819.

SIR: In answer to your letter of the 4th instant, I have the honor of informing you that the act of Congress of 3d March, 1817, to which it refers, was repealed by the act of the 20th of April last, entitled "An act in addition to the act for the punishment of certain crimes against the United States, and to repeal the acts therein mentioned," being the eighth chapter of the laws of the last session. On referring to this last-mentioned statute, which is not of limited duration, you will find that the provisions of the temporary act of 3d March, 1817, are re-enacted by it.

I pray, &c.,
(Signed) JOHN QUINCY ADAMS.

No. 15.

The Chevalier de Serra to Mr. J. Q. Adams.

WASHINGTON, *March* 17, 1819.

SIR: Though I have had the honor of a conference with you on the subject touched in this paper, I shall take the liberty to leave with you this summary of my views, as a memorandum to recall them to your consideration.

Since the moment this Government gave such a distinguished proof of its justice and friendly dispositions toward mine as that of agreeing to the request of taking in its hands the legal satisfaction to the insulted flag of my sovereign, by gratitude for what it was doing, and out of a due regard to its feelings, I have abstained from written applications about the new individual offenses the armed ships of which I complain have still continued to commit. They have been, however, both atrocious and frequent. Some of them have reached you officially by American citizens, who begin at last to suffer by the acts of these lawless crews.

But, sir, though the honorable and friendly course that this Government has adopted insures me of the punishment of the culprits in any case in which the existing laws can attain them, still I cannot be at rest on the fate of the commerce of the subjects of my sovereign. It is im-

possible, though the courts of justice cannot attain them all, to dissemble the number of and the forces employed by the persons in the United States interested in the iniquitous pursuit of plundering the lawful property of an inoffensive friendly nation. The ultimate consequences of such a state of things must unavoidably be to spread immorality and corruption in your country, tarnish the fair character of your nation, and to excite feelings of bitterness and distrust toward her in the breast of a government and a nation which nature, it would seem, had destined by their situation to be always your friend, and a useful and an advantageous one.

Our case, sir, is widely different from that of Spain; it admits of another and radical remedy. This remedy, I am persuaded, is in the power of this Government; consequently I am confident it will administer it and by that means bind more closely our two countries, which these profligate people are striving as much as is in their power to alienate from each other.

The insurgent governments of Spanish America are in a state of civil war with their metropolis and are in possession of extensive sea-coasts and a great number of ports. They have in consequence the means and the power of navigating, from which, and only from which, originate the means, power, and right of fighting by sea. In such case the law of nations allows the neutral powers to keep their neutrality and to treat on an equal footing the vessels of both parties. This impartial and dignified course has been adopted in this civil war by the wisdom and justice of both our governments, and the ships of both have been equally respected by the privateers of all these insurgent flags, with but rare exceptions. Only a pretended Artigan flag runs the seas, taking our ships and property; and it happens that this flag is the only one not entitled to the neutrality which, by the law of nations, may be allowed to the others. I can, in the capacity of minister of my sovereign, certify you solemnly, and officially too, if necessary, that Artigas and his followers have been expelled far from the countries that could afford them the least means and power of navigating, and consequently have no right to fight by sea. What become, then, the privateers under this flag—the rights of privateers, according to reason and to every publicist, being but a partial delegation of the rights of the authority that gives him the commission?

This phenomenon seems quite new in the history of the civilized world. Let us suppose that a Swiss flag and Swiss privateers made their appearance at sea, what would be the general astonishment? Where is the Swiss port from which they could take their departure and be fitted or refitted? where the Swiss court of admiralty that could judge their prizes? If some other nation allows them the use of their ports and courts, she deserts by that act the ground of neutrality, becomes the ally offensive, making common cause with the Helvetic body by lending him the means he has not by himself of annoying his opponents.

It is most certainly very far from the upright instructions of this Government that Baltimore or any part of the Union be in the above predicament. Still, the wicked people of whom I complain make it so in fact. The Artigan flag, which has not a foot-length of sea-shore in South America where it can show itself, is freely and frequently waving in the port of Baltimore; and even the Portuguese prizes already under the safeguard of the United States have been polluted by it every Sunday without intermission. Artigan cockades are frequently met with in that city in the hats of American citizens unworthy the honor of this name. How does it happen that in the time Artigas (if existing at all in

[154] *this moment) is wandering with very few followers, lurking in the far inland forests near Corrientes, the port of Baltimore contains very often armed ships bearing his flag; and people born in the United States, who never saw the country where he lived, are found in that city wearing the badges of his service? No doubt can exist of the unlawfulness of such things, and of their direct opposition to the honorable intentions of this Government and to the law of nations.

The law enacted the 3d of this month, supporting the supreme Executive in the employment of the national forces to suppress piracy, such as it is defined by the law of nations, comprehends this branch of it. But my mentioning the law is only incidental; I rely much more on the expedients that the justice and wisdom of the Executive may inspire to him than in anything that may occur to my mind. If the Artigan flag is once declared illegal, and the prizes made under it acts of piracy, all occasions of bitterness and mistrust are done away, and our two nations are immediately in those relations, each to the other, that the nature of their situations naturally calls for—perpetual amity on both sides and friendly mutual advantageous intercourse forever.

Your country possesses almost all the industry in arts that exist in the two Americas, and has taken such an early start, with such rapid strides, that many centuries will pass before she loses the advantage. Mine possesses the richest productions in the world. No territorial jealousies can exist among them; no rivality or concurrence can ever happen in the articles of their commerce. Our two governments are the only ones of America that are acknowledged by all mankind, and each of them will be always the paramount power in his respective moiety of this hemisphere. When America is to become of age and be ruled by a system of herself, these two governments will always be the directorial ones of the whole system. How many ponderous reasons these of mutual regard and good intelligence, even without any entangling treaties or alliances. But thanks to the piratical Baltimore patriotism, a degree of mistrust has very naturally taken place in the hearts of the Portuguese, which I am confident the just proceedings of your Government, chiefly this which I now request, will allay and extinguish.

Permit me, sir, to give you a just idea of what these feelings must be in the present moment.

If Tecumseh, in the war of Tippecanoe, had given privateer commissions to Portuguese subjects against the commerce of the United States, and those privateers had taken so many American ships and plundered so many millions value as the Baltimoreans have now taken Portuguese; if they had carried the prizes to ports of the Crown of Portugal, finding there so many abettors as the present pirates have unhappily found in the ports of America; if they had entered your ports and received there all the offices of hospitality under the Portuguese flag, and immediately out of them had hoisted Tecumseh's flag and captured the ships going out of the same ports; if they had made descents on the territory of the United States, plundered public and private property to considerable amount, murdered the people, insulted and maimed the magistrates, &c., what would be the sentiments of every good American toward Portugal and Portuguese, at least until the moment that my government would effectually put an end to such acts of his subjects?

Very happily the Federal courts seem of late to have understood and followed the sentiments of your Government; and I rejoice to have it in my power to announce to mine the restitution to the lawful owners of the ships Monte Alegre and Loisidade Felix. But you see clearly that the right opinions of particular judges and private lawyers are but

a partial and too precarious remedy; Government only declaring the unlawfulness of the pretended Artigan flag, can put an end to these evils and restore by that the course of mutual intimacy between our two nations. This is what I have the honor to put under his eyes with the most perfect confidence in his feelings and wisdom.

Accept, &c.,
(Signed) JOSEPH CORREA DE SERRA.

No. 16.

Mr. J. Q. Adams to the Chevalier de Serra.

WASHINGTON, *April* 22, 1819.

SIR: I had the honor of receiving from you a letter dated the 11th of December last, stating by the precise orders of your sovereign that the armed vessel, called the Irresistible, had been committing depredations and outrages on the coast of Brazil, and that, from the depositions taken there of various persons who had been on board of that vessel, it appeared that her commander, John Daniels, was of Baltimore, and all her crew were Americans. It has come to the knowledge of this Government that, within a very few days, John D. Daniels, supposed to be the person mentioned in your letter, has returned to the United States, and is now at Baltimore. The attorney of the United States for the district of Maryland, under instructions from this Department, will commence a prosecution against him if evidence shall appear sufficient for convicting him of having violated the laws of the United States, by outrages committed upon any of the subjects of Portugal. I have the honor of giving you this notice in reference to your letter above mentioned, and of requesting you to give directions that any testimony which may be material for the commencement of a prosecution, and which it may be in your power to indicate, may be made known to Elias Glen, the district attorney of the United States, at Baltimore, who is directed to prosecute, conformably to the laws, any person against whom the evidence obtainable shall be sufficient to warrant his conviction. Your letter has hitherto remained unanswered only because the person complained of having been without the jurisdiction of the United States, no measures could be taken to bring him to trial.

I avail, &c.,
(Signed) JOHN QUINCY ADAMS.

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[155] *No. 17.

The Chevalier de Serra to Mr. J. Q. Adams.

PHILADELPHIA, *November* 23, 1819.

SIR: I have the honor of submitting to you the following facts and considerations:

During more than two years I have been obliged by my duty to oppose the systematic and organized depredations daily committed on the property of Portuguese subjects by people living in the United States and with ships fitted in ports of the Union, to the ruin of the

commerce of Portugal. I do justice to and am grateful for the proceedings of the Executive, in order to put a stop to these depredations, but the evil is rather increasing. I can present to you, if required, a list of fifty Portuguese ships, almost all richly laden, some of them East Indiamen, which have been taken by these people during the period of full peace. This is not the whole loss we have sustained, this list comprehending only those captures of which I have received official complaints. The victims have been many more, besides violations of territory by landing and plundering ashore with shocking circumstances.

One city alone on this coast has armed twenty-six ships which prey on our vitals, and a week ago three armed ships of this nature were in that port waiting for a favorable occasion of sailing for a cruise. Certainly, the people who commit these excesses are not the United States, but nevertheless they live in the United States and employ against us the resources which this situation allows them. It is impossible to view them otherwise than a wide-extended and powerful tribe of infidels, worse still than those of North Africa. The North Africans make prizes with leave of their government, according to their laws, and after a declaration of war; but these worse infidels of whom I speak make prizes from nations friendly to the United States, against the will of the Government of the United States, and in spite of the laws of the United States. They are more powerful than the African infidels, because the whole coast of Barbary does not possess such a strength of privateers. They are numerous and widely scattered, not only at sea for action, but ashore likewise to keep their ground against the obvious and plain sense of your laws, since most generally wherever they have been called to the law, they have found abettors who have helped them to invade the laws by formalities.

I shall not tire you with the numerous instances of these facts, but it may be easily conceived how I am heartily sick of receiving frequent communications of Portuguese property stolen, of delinquents inconceivably acquitted, letters from Portuguese merchants deeply injured in their fortunes, and seeing me (as often as has been the case) oppressed by prayers for bread from Portuguese sailors thrown penniless on the shores after their ships had been captured.

The Executive having honorably exerted the powers with which your Constitution invests him, and the evil he wished to stop being found too refractory, it would be mere and fruitless importunity if I continued with individual complaints except by positive orders. This Government is the only proper judge of what constitutional depositions or arrangements may be established for the enforcement of the laws, and he alone has the means of obtaining them, which are constitutionally shut to any foreign minister; I trust in the wisdom and justice of this Government that he will find the proper means of putting an end to this monstrous infidel conspiracy, so heterogeneous to the very nature of the United States.

Before such convenient means are established the efforts of a Portuguese minister on this subject (the only one of importance at present between the two nations) are of little profit to the interests of his sovereign. Relying confidently on the successful efforts of the Government to bring forth such a desirable order of things, I choose this moment to pay a visit to Brazil, where I am authorized by His Majesty to go. My age and my private affairs do not allow much delay in making use of this permission, and I intend to profit by the first proper occasion that may offer. The arrangements for my departure will require my personal exertions, and it will not be consequently in my power

to make an early or long residence in Washington this winter. As soon as I shall be able, I will present myself there to pay my due obeisance to the President of the United States and my respects to you.

Accept, &c.,

(Signed) JOSEPH CORREA DE SERRA.

No. 18.

The Chevalier de Serra to Mr. J. Q. Adams.

[Translation.]

PHILADELPHIA, *June* 4, 1820.

SIR: Mr. Joachim Barozzo Pereira, appointed by my sovereign consul-general of Portugal in these United States, is arrived in Philadelphia, and has shown to me his commission, accompanied by the official communication from the minister for foreign affairs. I have, consequently, the honor of presenting him to this Government in that capacity, and request the exequatur of the President to his commission. I present also Mr. Henry Hutton, as vice-consul of Portugal in the port of New Orleans, and all the others of the United States in the Gulf of Mexico, and request the necessary exequatur.

Permit me, sir, to profit of this occasion to offer my thanks to this Government for the law that prohibits the entrance of privateers in the most important ports of the Union, and for the other that declares piracy the landing and committing outrages ashore on foreign lands. I acknowledge the salutary influence of the Executive in obtaining these ameliorations. The courts of justice also seem to take a more adequate view of the practices about which I have been forced to importunate
[156] this *Government by my reiterated complaints. At least, henceforward, those who engage in such pursuits will have in prospect a lesser chance of impunity.

Undoubtedly, the aforesaid provisions will diminish the evil, but something remains still to be done to suppress it entirely. In the full persuasion of the sincere wishes of this Government to put a final stop to practices so contrary to the friendly intercourse between our two nations, I propose to have the honor of submitting to your consideration my views on this subject, in the occasion of personally paying my respects to you, and taking my leave, previous to my visit to the Brazils.

I beg, &c.,

(Signed) JOSEPH CORREA DE SERRA.

No. 19.

The Chevalier de Serra to Mr. J. Q. Adams.

[Translation.]

PHILADELPHIA, *June* 8, 1820.

SIR: I think it my duty to represent to this Government that the Portuguese ship Montalegre was brought to Baltimore twenty-two

months ago, a prize to a so called Artigan privateer, and has been all this time the subject of litigation with the Artigan captors, American citizens. Past things are not intended to be in any way the object of this communication, but merely the prevention of future evil. In the 1st of this month this ship was sold by judicial authority in Baltimore, under the hammer, to Captain Chase, a notorious privateersman, standing under an indictment for piracy. It is to be immediately fitted as a privateer (and a formidable one it will prove by its size and strength, which are those of a good frigate) to cruise against the Portuguese Indiamen, and the command of it to be given, as it is assured, to the notorious Captain Taylor.

I have not the least doubt that the supreme Executive of this nation has both the power and the will of putting a stop to this hostile armament, particularly when, as in this case, he has timely information which will be successively put under his eyes, at every stage of this inimical attempt on the Portuguese commerce.

I beg, &c.,
(Signed) JOSEPH CORREA DE SERRA.

No. 20.

The Chevalier de Serra to Mr. J. Q. Adams.

[Translation.]

WILMINGTON *July* 16, 1820.

SIR: I am ordered by my sovereign to lay before this Government the names and value of nineteen Portuguese ships, and their cargoes, taken by private armed ships, fitted in the ports of the Union by citizens of these States. The values have been ascertained by the proper courts of justice, and revised with all care and attention by the royal board of commerce. In proportion as the value of the other ships stolen is in the same manner ascertained, their names, and the amount of losses, will be laid before this Government.

His Majesty, consistently with his friendly and equitable sentiments toward the United States, wishes that this affair be treated with all that candor and conciliating, dignified spirit that becomes two powers who feel mutual esteem and have a proper sense of their moral integrity. In this spirit I have the honor to propose to this Government to appoint commissioners on their side, with full powers to confer and agree with His Majesty's ministers in what reason and justice demand. It is not expected that a Government who, in every occasion, has so steadily and nobly protected the just pretensions of his own citizens, like that of the United States, may have the least difficulty in concurring with such candid views of a sovereign who feels, equally with them, what he owes to himself in the protection of his subjects.

The ships are the following: 1. D. Pedro de Alcantara. 2. S. João Baptista. 3. D. Miguel Forjàz. 4. Sa. Maria Vencedora. 5. Thalia. 6. S. João Protector. 7. Monte Alegre. 8. Louisa. 9. Logo the Direy. 10. Lord Wellington. 11. Ninfa de Lisboa. 12. General Sampaio. 13. Perola. 14. Paquete de Porto. 15. Conde de Cavalleiros. 16. Globo. 17. Carlota. 18. Flora. 19. Sra. da Piedade.

The amount of their value which is reclaimed is 492,918 milreas, which, at the common and general rate of milreas in your market, is equal to $616,158.

I am proceeding to an excursion in the mountains, at the end of which I intend having the honor of seeing you in Washington. The reason of my mentioning this is because a written answer, which you might possibly give to this communication, would naturally miss me.

I beg, &c.,
(Signed) JOSEPH CORREA DE SERRA.

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[157] No. 21.

Mr. J. Q. Adams to the Chevalier de Serra.

DEPARTMENT OF STATE,
Washington, July 20, 1820.

SIR: I have had the honor of receiving your notes of the 4th and 8th ultimo.

The exequaturs for Mr. Pereira, as consul-general of Portugal, and of Mr. Hutton, as consul at New Orleans, and the other ports of the United States in the Gulf of Mexico, have been made, and transmitted to you.

The acts of Congress to which you refer, in the first of these notes, may be justly considered as affording the most decisive proofs of the determination, both of the legislature and the Executive, to discharge, with the utmost fidelity, all their duties toward friendly nations, and particularly toward that whose representative you are. In remarking that the section of the statute for the further punishment of piracy, which brings the landing and committing acts of robbery on a foreign shore within the definition and penalties of that crime, was obviously suggested by a case of that description which had occurred in a Portuguese island, I take satisfaction in the assurance that your Government will perceive in that provision a proof of the earnestness with which the United States cherish the most friendly dispositions toward your country.

It will give me pleasure to receive any further communication, verbal or written, from you, which may contribute toward the same effect; and I am authorized to assure you that, upon the information contained in your note of the 8th instant, such measures have been and will continue to be taken, under the direction of the President, as are within the competency of the Executive, and may serve to maintain inviolate the laws of the United States applicable to the case.

I avail, &c.,
(Signed) JOHN QUINCY ADAMS.

No. 22.

The Chevalier de Serra to Mr. J. Q. Adams.

[Translation.]

WASHINGTON, *August* 26, 1820.

SIR: In consequence of the wish you expressed in our last interview, I have the honor of transmitting to you the names of the officers of the Navy of the United States who, in October 1818, embarked and served on board the armed schooner General Artigas, Captain Ford, under the

so-called Artigan flag, and cruised for many months on the coast of Brazil, capturing several Portuguese ships, among others the Sociedade Feliz, which was brought to Baltimore. Their names are Lieutenants Peleg and Dunham, Rhode Island; Midshipmen Augustus Swartout, of New York; Benjamin S. Grimke, of South Carolina.

The griefs against the particular judges who, I believe, have disgraced the commission they have from the United States, shall be laid before you as soon as I am returned to Philadelphia and looked into my papers.

I am perfectly sure that a candid and friendly examination of this unpleasant business cannot fail of bringing a mutual accord, such as both our governments wish; and, therefore, according to what I asked in my notes from Philadelphia, and your offer in that of the 20th of last month, which I have received on my arrival here, I beg of you to fix the day and time most convenient to you in which I may have the honor of meeting you, in order to put an end, as I hope, to all these causes of discontentment and discord, the work of unprincipled men, and so utterly opposite to the harmony and good understanding which it is equally the intention and the interests of our two governments to maintain and cultivate.

Accept, &c.,

(Signed) JOSEPH CORREA DE SERRA.

No. 23.

Mr. J. Q. Adams to the Chevalier de Serra.

DEPARTMENT OF STATE,
Washington, September 30, 1820.

SIR: The proposal contained in your note of the 16th of July last, has been considered by the President of the United States, with all the deliberation due to the friendly relations subsisting between the United States and Portugal, and with the disposition to manifest the undeviating principle of justice by which this Government is animated in its intercourse with all foreign governments, and particularly with yours. I am directed by him to inform you that the appointment of commissioners, to confer and agree with the ministers of his most Faithful Majesty upon the subject to which your letter relates, would not be consistent either with the Constitution of the United States nor with any practice usual among civilized nations.

The judicial power of the United States is, by their Constitution, vested in their Supreme Court, and in tribunals subordinate to the same. The judges of these tribunals are amenable to the country by impeachment; and if any Portuguese subject has suffered wrong by the act of any citizen of the United States, within their jurisdiction, it is before those tribunals that the remedy is to be sought and *obtained. For
[158] any acts of citizens of the United States, committed out of their jurisdiction and beyond their control, the Government of the United States is not responsible.

To the war in South America, to which Portugal has for several years been a party, the duty and the policy of the United States have been to observe a perfect and impartial neutrality.

The Government of the United States has neither countenanced nor permitted any violation of that neutrality by their citizens. They have, by various and successive acts of legislation, manifested their constant earnestness to fulfill their duties toward all the parties to that war; they

have repressed every intended violation of them, which has been brought before their courts, and substantiated by testimony conformable to principles recognized by all tribunals of similar jurisdiction.

But I am instructed to request that you would furnish me with all the documents upon which the complaints in your notes of the 16th of July and 26th of August are founded, as well relating to the vessels mentioned in the former as to the naval officers in the service of the United States, and to the judges whom in the latter you accuse of having, in your belief, disgraced the commissions which they bear. And I am further commanded to assure you that, if these documents shall be found to contain evidence upon which any officer, civil or military, of the United States, or any of their citizens, can be called to answer for his conduct, as injurious to any subject of Portugal, every measure shall be taken to which the Executive is competent to secure full justice and satisfaction to your sovereign and his nation.

I pray, &c.,
(Signed) JOHN QUINCY ADAMS.

No. 24.

The Chevalier de Serra to Mr. J. Q. Adams.

[Translation.]

NEW YORK, *November* 9, 1820.

SIR: I have received in due time your official letter of the 30th September last, and though I found that there was much to reply on my side, I resolved, after mature consideration, to refer it to His Majesty's ministers of state, who no doubt will give a convenient answer. Being now on the point of leaving this country, I thought it proper to inform you of this step, both out of regard to this Government, taking in this manner a respectful notice of your communication, and in order that out of my silence no belief may arise of any tacit acquiescence in the reasons that you exposed in it.

Accept, &c.,
(Signed) JOSEPH CORREA DE SERRA.

No. 25.

The Chevalier Amado Grehon to Mr. J. Q. Adams.

[Translation.]

PHILADELPHIA, *December* 4, 1820.

SIR: It falls to my duty to present to the Government of the United States the inclosed abstract of a new case of piracy which I have lately received from my court, and to request of you to subjoin it (that it may appear) to the list of others which has been presented to this Government by the Chevalier Correa, minister plenipotentiary of his most Faithful Majesty.

I embrace, &c.,
(Signed) JOSEPH AMADO GREHON.

[Inclosure in No. 25.]

Abstract from the Procès Verbal.

[Translation.]

PHILADELPHIA, *December* 4, 1820.

On the 5th of March, 1820, to the north of Cape St. Augustine, latitude 7° 1-2′ south, the brigantine packet of his most Faithful Majesty, named the Infant D. Sebastiano, was attacked and pillaged by a brigantine pirate, of American construction, with an S instead of a figure-head; armed with 16 24-pounders, and a crew of about 100 men, the captain of which, (who has lost a hand,) the other officers, and three-fourths of the crew, are Americans, according to the formal evidence which has been given before the intendant-general of the police of the court and kingdom of Brazil, by the officers, crew, and passengers of the packet brig, who, after having been outraged and pillaged, have returned in the same brig to Rio de Janeiro.

(Signed) JOSEPH AMADO GREHON.

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[159] *No. 26.

The Chevalier Amado Grehon to Mr. J. Q. Adams.

[Translation.]

PHILADELPHIA, *December* 14, 1820.

SIR: I have the honor of again transmitting to you an authentic copy of twelve claims, requesting you to add them to the list of others which the Chevalier de Correa de Serra, minister plenipotentiary of His Most Faithful Majesty, presented to your Government.

I expect the honor of your answer to this note, and also to the former which I addressed to you on the 14th instant, that I may be enabled to give an account to my court.

I am, &c.,

(Signed) JOSEPH AMADO GREHON.

Table of the general values claimed by twelve joint claims, from No. 52 to 63, (which are all that from December 14, 1819, to the present time have been legalized by the respective claimants,) with a classification of the ships which have been taken and robbed by pirates, and extracted from the particular table of each ship.

[Translation.]

Names of ships.	Names of captains.	Port of departure and destination.	Value of ships.	Value of freights.	Value of goods.	Agio of paper.	Premium of sea-risk.	Total claim.	Interest.
Santa Maria Vencedora	José Joaquim de Lima	Pernambuco to Lisbon			6,607$552	308$690	136$691	7,053$233	
Luzitania Filiz	John Jos. de Fonseca	In the island Gratioso	4,000$000		15,870 000			19,870 000	2,959$405
Don Miguel Forjaz	Miguel Theotonio	From Rio to Lisbon	17,977 777	6,026$530	4,000 000		1,200 360	32,164 072	
Nymph of Lisbon	Augustine dos Santos	From Lisbon to the Pará			1,755 891			1,755 891	
Lord Wellington	Alex. Jos. Rodriguez	do			3,977 775			3,977 775	
Monte Alegre	Joaquim Jos. Gonsalves	From Bahia to Lisbon			4,817 230	490 990		5,308 220	
Raynha dos Mares	Joaquim de Silva Lima	do			860 050	87 653		947 703	
Luza	John Borges Pamplona	Lisbon to Maranham			2,885 525			2,885 525	
Globo	Th. de Va. Nova Ribro	Bombay to Lisbon			5,641 253			5,641 253	
Logo the Direi	Antonio José da Silva	Lisbon to Maranham			1,168 727			1,168 447	
			21,977 777	6,026 530	47,583 723	887 333	1,337 351	80,772 119	2,959 405

Office of the general accountant of the Royal Junta of Commerce, Agriculture, Manufactures, and Navigation July 27, 1820.

(Signed) FRANCISCO MORATO ROMA,
Accountant-General.

No. 27.

The Chevalier Amado Grehon to Mr. J. Q. Adams.

[Translation.]

WASHINGTON, *April* 1, 1822.

SIR: I am about to repeat in writing all that I had the honor to communicate to you in the interview of Saturday last, as well in compliance with your request as on account of its being in conformity with the orders of my government, of which Verissimo Antonio Feriera da Costa, attached to the legation, was the bearer; and by which I am empowered to notify and show to the Government of the United States, and to the nation, what follows:

That the Portuguese government has resolved to recognize the United States as its first ally, by a treaty which it is desirous of concluding forthwith, for the purpose of giving every possible impulse to reciprocal commerce, and to the industry of the two nations, and to guard the national independence, which constitutes the most sacred of all rights, against the direct or indirect attacks of powers unfriendly to the constitution freely chosen by the people; but, as a fundamental principle of the said treaty, there should be a preliminary condition that the Government of the United States accede to the proposition made by the Chevalier Correa de Serra, ex-minister plenipotentiary of Portugal, in his note of the 16th July, 1820, of having recourse to commissaries chosen by both governments, for the purpose of arranging the indemnities justly due to Portuguese citizens for the damages which they have sustained by reason of piracies, supported by the capital and the means of citizens of the United States; an essential condition, which, in this way, repairing the past, secures also the future.

That the Portuguese States in the four quarters of the world can offer to the United States the most important advantages of commerce; the more so, because the relations which the Portuguese government is disposed to establish with that of the United States, are founded in a perfect union against the common enemies of their industry and of their independence.

But, if all efforts on the part of the Portuguese government should be fruitless toward obtaining from that of the United States a just and reasonable indemnity, which England does not hesitate to make in analogous cases of unjust captures, the Portuguese government is fully determined to resort to the right of reprisals, and to adopt proper measures to indemnify itself for the losses which have been occasioned to their commerce by the acts complained of, as it has been manifestly made to appear in the face of the world that unworthy citizens of the United States have been parties in this perfidious practice; and it is very certain that the Portuguese government has it in its power to exercise reprisals against the United States, by granting to their rival powers advantages in
[160] commerce, * in cases in which it is disposed to give the United States the preference, if, acting in good faith, they make indemnity for the past and secure the future.

These are the earnest sentiments and views of the Portuguese government which have been communicated to me, with orders to make them known to that of the United States and to the nation. I have, therefore, the honor, sir, to communicate them to you for that purpose; and I shall be happy if the result of this communication (which I expect from a just and liberal government such as is that of the United

States) may be conformable with the sentiments and the desire of the Portuguese government.

I have, &c.,
(Signed) JOSEPH AMADO GREHON.

No. 28.

Mr. J. Q. Adams to the Chevalier Amado Grehon.

DEPARTMENT OF STATE,
Washington, April 30, 1822.

SIR: Your letter of the 1st instant has been submitted to the consideration of the President of the United States, by whom I am directed to assure you of the great satisfaction with which he has received the friendly declaration of the Portuguese government toward the United States, and the disposition manifested by them to promote the mutual interests and the amicable intercourse between the two countries, by a treaty founded upon principles favorable to the commercial relations and industry of both. The President desires that you would, in return, make known to your government the sentiments of friendly reciprocity which animates the Government of the United States toward Portugal, and the earnest wish of the President that the relations of the United States with that nation may continue on terms of the most entire reciprocity. I am, at the same time, directed to state that the proposition of the Chevalier Correa de Serra, in his note of the 16th July, 1820, for the appointment of commissaries chosen by both governments to arrange indemnities claimed by Portuguese citizens for damages stated by them to have been sustained by reason of piracies supported by the capital and means of citizens of the United States, cannot be acceded to. It is a principle well known and well understood, that no nation is responsible to another for the acts of its citizens, committed without its jurisdiction, and out of the reach of its control. Of the numerous piracies which have within these few years annoyed the commerce of every maritime nation, a much greater number have been committed by the subjects of other powers than by the citizens of the United States. The lawful commerce of the United States themselves has suffered by these depredations, perhaps, more than that of Portugal. When brought within the jurisdiction of the United States, the pirates have been punished by their laws, and restitution has been made to its owners of property captured by them. Should any citizens of the United States, guilty of piracy, be captured by the Portuguese government, the United States will in nowise interfere to screen them from punishment.

The citizens of the United States are amenable also to the tribunals of their own country, as the people of Portugal are to theirs, for any wrong done by them to the subjects of other nations. For acts of so aggravated a nature as piracy, the authority of the Government of the United States itself is not competent to withdraw them from the jurisdiction of their natural judges, or to subject them to a trial consisting partly of foreigners, and without the intervention of a jury. These principles of protection and security to individual rights are, doubtless, well understood, and will be duly appreciated in Portugal, under the liberal system of government now established in her dominions.

The laws and the tribunals of the United States are adequate to the

punishment of their citizens who may be concerned in committing unlawful depredations upon foreigners on the high seas, at least to the same extent as the laws and tribunals of other nations. The legislation of the United States upon this subject was even rendered more severe and effectual for the suppression of such offenses during the residence here of the Chevalier Correa de Serra; and justice conformably to the established principles of the laws of nations has always been rendered by the courts of the United States to the Portuguese subjects, whose property, after capture by piracies of privateers, has been brought within the jurisdiction of this nation. It will continue to be so rendered in all cases which may occur hereafter.

Of the advantages to the commerce of the United States in the four quarters of the world, which it may be in the power of the Portuguese government to offer, it would be acceptable to receive a more particular specification than is contained in your letter. The Government of the United States would then be able to judge of their value and of the consideration with which they may be returned. It is not perfectly understood who are meant in your note by the "common enemies of their industry and their independence," and I am directed to ask of you a precise explanation of that expression. The Government of the United States, while willing cheerfully to meet and reciprocate any commercial arrangements with Portugal propitious to the interests of both nations, will not solicit, and cannot grant, any exclusive favors, to the prejudice of any other power whatsoever.

This principle, which has long been fundamental to the commercial policy of the United States, furnishes a reply to the latter part of your letter, which, in the place of a non-compliance with proposals, as I have informed you, cannot be accepted, threatens reprisals upon the United States, by granting to their rival powers advantages in commerce which, you allege, your government is disposed to give to the United States, on condition of what you call indemnity for the past and security for the future.

The Government of the United States knows that there is nothing, and has been nothing, in the relations between them and Portugal which, by the laws and usages of civilized nations, could justify reprisals of any kind by the latter against the United States. And, as I have assured you, that they *desire no exclusive favors to the detriment
[161] of others, so they are fully persuaded that upon further advisement your government will perceive that they cannot grant commercial favors to any other nation to the detriment of the United States without injuring their own subjects more than the people of this Union. Such, it is believed, would be the result of any experiment of reprisals by granting exclusive favors to one nation with the view to damage another. The party granting exclusive favors is the party most severely punished.

Far more agreeable will it be to the Government of the United States to reciprocate as heretofore, with that of Portugal, offices of kindness and good will, and to promote the friendly intercourse between the two nations by a multiplication of good offices, and of all the sources by which the interests of both may be advanced.

Accept, &c.,

(Signed) JOHN QUINCY ADAMS.

No. 29.

The Chevalier Amado Grehon to Mr. J. Q. Adams.

[Translation.]

PHILADELPHIA, *May* 1, 1822.

SIR: I have the honor to inform you that I have just received your letter which you addressed to me on the 30th of last month.

The explanation which you demand of me, and which I am to give you, according to what I meant by saying "the common enemies of their industry and of their independence," and which appears to me to be clearly expressed, is this: All nations in general who act contrary to the two principles of our industry and of our independence.

I have, &c.,
(Signed) JOSEPH AMADO GREHON.

No. 30.

Mr. Adams to General Dearborn.

DEPARTMENT OF STATE,
Washington, June 25, 1822.

SIR: The political and commercial relations between the United States and Portugal have always been of an interesting character. By the revolution in the government of that country recently consummated, and by the return of the King and part of his court and family to Europe, they have been, and may be further, affected in a manner to require the agency of a person not only generally conversant with the intercourse which has heretofore subsisted between the two countries, but, by long experience in the public affairs of this Union, and a familiar acquaintance with its interests, qualified to represent them at a time and under circumstances in many respects critical. Fully acquainted with your long and faithful services to this Union in some of its highest trusts, the President has been induced by these considerations to invite your co-operation again in the public service, and has learned with great satisfaction your acceptance of the appointment of envoy extraordinary and minister plenipotentiary to Portugal.

Independently of the changes in the diplomatic relations of the two countries, which have resulted from the removal of the King from Rio de Janeiro to Lisbon, other accidental circumstances have concurred to cause some irregularity and disorder in them. In the spring of the year 1819 Mr. John Graham was appointed minister plenipotentiary of the United States to the court of Brazil, to succeed Mr. Thomas Sumpter, jr., who had resided there in that capacity almost from the time of the transfer of the Portuguese government thither; Mr. Graham, within a little more than a year from the time of his departure on that mission from the United States, was compelled to return home, and barely lived to reach this country.

About the same time the Chevalier Correa de Serra, who had for several years resided as the minister plenipotentiary of Portugal in this country, was recalled and left the United States. A resolution of the Senate of the United States, in March, 1821, recommended to the Pres-

ident the appointment of a minister to the court of Brazil, but the return of the King of Portugal to Europe very shortly afterward rendered the compliance with this resolution unavailing.

The departure of that prince from Rio de Janeiro had been preceded by various movements of a revolutionary character, as well there as in Portugal. He had, immediately before embarking, appointed as his minister to the United States the person who, since his arrival in Europe, has acted as his secretary of state for foreign affairs. And it appears that, since the revolution there, which has invested the Cortes with a principal portion of the sovereign authority, the policy of maintaining ministers of the plenipotentiary rank from that country has been suspended. A chargé d'affaires has been appointed to repair to Washington, but has not yet arrived. In the mean time that office has been discharged by the Chevalier Amado Grehon, who had been secretary of legation to Mr. Correa, and recently a Mr. Dacosta has been here and announced himself as attached to the legation, and to exercise the powers of consul-general.

The usual diplomatic intercourse between the United States and Portugal has thus been for the last three years in a great measure suspended. Nor is it probable that the mission of the United States now instituted will be of long duration. There are objects, political and commercial, which require its most serious attention, and which it is hoped may be adjusted satisfactorily to both countries by your intervention.

[162] *After the invasion by the Brazilian Portuguese government of Montevideo and the eastern shore of the river Plata, a revolutionary government, under the name of the Oriental Republic of La Plata, and subject to the authority of a military chief named Artigas, for several years maintained a defensive war, at once against them and against the rival revolutionary republic styled the United Provinces of La Plata. The latter, the seat of government of which was at Buenos Ayres, never came to a state of declared war with Portugal, but the republic of Artigas did, and that commander issued commissions for privateers and letters of marque against the Portuguese, under which the commerce of that nation was for three or four years much annoyed. Of the captures made by these privateers, several were brought into the ports of the United States, and frequent complaints were received from Mr. Correa that some of the privateers were fitted out within the United States and partly manned by their citizens. To these complaints every attention, compatible with the rights of the citizens of the United States and with the laws of nations, was paid by this Government. The laws for securing the faithful performance of the duties of neutrality were revived and enforced; decrees of restitution were pronounced by the judicial tribunals in all cases of Portuguese captured vessels brought within the jurisdiction of the United States; and all the measures within the competency of the Executive were taken by that Department of the Government for repressing the fitting out of privateers from our ports and the enlisting of our citizens in them.

These measures, however, do not appear to have been altogether satisfactory to the Portuguese government, doubtless because they were not sufficiently understood by them. Shortly before the Chevalier Correa de Serra left the United States he addressed to this Department several notes, copies of which, as well as of two subsequent notes from Mr. Amado, are herewith inclosed, containing lists of Portuguese vessels captured by privateers alleged to have been fitted out in the United States, or partly officered and manned by citizens of this

country. To these lists were added claims of indemnity to a large amount upon the United States for the value of these vessels and cargoes, and with them was connected a demand for the appointment of a joint commission, to be appointed by the two governments, to determine and assess the amount of damages to be paid by the United States for these captures. As there was no precedent for the appointment of such a commission under such circumstances, and as not a single case of capture had been alleged for which the United States were justly responsible, this proposal was of course denied; and nothing further was heard upon the subject until the 1st of April last, when a note was received from the present chargé d'affaires of Portugal, leading to a correspondence, copies of which are now furnished you.

Among the first and most important objects of your mission will be the charge of reviewing the whole course of this correspondence, from the time when the proposition for the appointment of commissioners was made by the Chevalier Correa de Serra. The President wishes that this service should be performed in the most conciliatory manner, and with all possible regard to the feelings of the Portuguese government.

It will, however, not be necessary that you should commence the correspondence with them. The menace of retaliation by commercial regulations favoring the trade of other nations, it can scarcely be supposed was intended to be carried into effect; for it would not be less impolitic than unjust; and with the experience which they have of the pernicious consequences of granting favors to one nation to the detriment of others, it is incredible that, under a government in which the public interest is felt through the medium of a proper representation, resentments, in themselves so unfounded, should be indulged by measures so injudicious and self-annoying.

You will, nevertheless, attentively watch, and forthwith report, any measures which may be adopted, or even specifically contemplated, of that character; and you will observe the disposition and temper of understanding between the Portuguese government, as now constituted, and those of the other powers of Europe. It is believed that they have no ministers at present residing in any part of Europe, nor ministers from any European government residing with them. Some of the allies have not yet recognized their revolutionary movement, and all have manifested, in some form, their dissatisfaction with it. These prejudices, it is probable, will gradually subside, and the usual intercourse between them and the rest of Europe will be restored. While its interruption continues, it is scarcely to be apprehended that they will adopt measures of rigor and injustice toward the nation which is the first to sympathize with them.

With regard to the proposal contained in the letter from Mr. Amado of the 1st of April, of a treaty of commerce, in which special advantages shall be granted to the United States, even if it were offered by itself, and separately from the inadmissible condition connected with it, we should not consider it as desirable or compatible with the true policy of either nation. We have never sought exclusive advantages in our treaties with any foreign nation. The policy of the United States, on the contrary, has invariably been to form its commercial institutions and engagements on the broadest and most liberal principles of reciprocity. We are neither solicitous nor unwilling to treat with Portugal upon subjects of commerce; but if we do treat, it must be upon those principles and in conformity with them. The convention of 3d July, 1815, with Great Britain, so far as it goes, exhibits the

system upon which we are desirous of settling our commercial arrangements with other nations, and the only one upon which we should be inclined to treat with Portugal.

We have seen in the public journals accounts purporting some dissatisfaction in the island of Madeira, at the rates of duties levied in the United States upon its wines. They are, however, moderate when considered in reference to the comparative prices of the article; and still more so when compared with the duties levied upon the same article in Great Britain. There is indeed no other country, except Great Britain, which imports and consumes the wines of Madeira in quantities comparable to those taken by the United States.

The connection between the kingdom of Portugal and that of Brazil has already been greatly affected by revolutionary movements in both countries. It can scarcely fail, within no distant period, to be more so. It is not conceivable that Brazil should ever again be subject to the colonial state, nor is it likely long to submit to any direct control from a [163] government so distant from it. Information of *the proceedings of the Cortes on this subject, especially so far as they may affect our commercial intercourse with Brazil, will be desirable, whenever and with as much accuracy as you can obtain it.

I am, &c.,

(Signed) JOHN QUINCY ADAMS.

No. 31.

Senhor de Figanière e Morão to Mr. Clayton.

NEW YORK, *May* 25, 1850.

The attention of Her Most Faithful Majesty's government has lately been called by members of Her Majesty's suffering subjects to the numberless depredations upon their property and commerce, in some instances by American privateers, among which the Revenge and the General Tompkins, during the war of 1812, between Great Britain and the United States, but specially to those piratically committed shortly after the settlement of the treaty of peace, through the following years, as late as 1820, and even after that year; and as these unlawful depredations have been committed by citizens of the United States, in vessels owned, fitted out, commanded, and mostly manned by said citizens, notwithstanding the flag they hoisted or the commission they purported to bear, of the unacknowledged rebel chief, Artigas, the government of Portugal has always held that of the United States bound, by well-known principles of the law of nations, to redress the said wrongs committed by its citizens upon the subjects of a friendly power, with which the United States have ever been at peace, and had continued commercial intercourse.

The said government of Her Most Faithful Majesty has consequently directed the undersigned, minister resident of Portugal, to have the honor to address the Honorable John M. Clayton, Secretary of State of the United States, for the special purpose of renewing these important negotiations, and urge the final settlement of the above claims by the Federal Government; negotiations which had solely been interrupted in consequence of the many political vicissitudes through which Portugal has unfortunately passed for many years.

It would be, the undersigned thinks, supererogatory and useless to employ the time of the honorable Secretary of State in perusing, and his own in now repeating, and circumstantially to enumerate, every instance of depredation committed, when his predecessors, and specially José Corréa de Serra, have already most fully presented to the American Government a relation of those illegal captures and robberies, amounting to a very considerable sum of money in the loss of vessels and merchandise, according to the legal authenticated documents in the archives in the legation of Portugal, many of which vessels were brought into the United States ports by their captors, as well as the cargóes of them, and others taken on the high seas.

Before the Chevalier Corréa de Serra left the United States, in 1820, in the month of June of that year, the then Secretary of State of the United States, convinced of the necessity of agreeing to some mode of settlement, and undoubtedly urged by the conclusive representations of the Portuguese minister plenipotentiary, consented to the suggestion that the American Government should appoint commissioners, who, together with such other persons as might in like manner be authorized by the government of Portugal, should examine into and estimate the losses and damage arising from the illegal captures referred to.

Should the above mode of coming at a satisfactory and amicable settlement of these long-pending and important claims be preferred by the Government of the United States, the undersigned is authorized to come to an understanding with the honorable Secretary of State upon the subject, and to submit the voluminous documents and papers in his possession to the joint examination and decision of the commissioners or arbitrators appointed by the American Government, on the one part, and the undersigned, on behalf of Her Majesty's government, on the other; and he would suggest that the said commissioners be authorized and instructed to have counsel or to consult competent persons versed in international and maritime law.

The undersigned, &c.,

(Signed) DE FIGANIÈRE E MORÃO.

No. 32.

Mr. Clayton to Senhor de Figanière e Morão.

WASHINGTON, *May* 30, 1850.

The undersigned, Secretary of State of the United States of America, has the honor to acknowledge the receipt of the note which the minister resident of Her Most Faithful Majesty addressed to him on the 25th instant, inviting attention to depredations on the commerce of Portugal, committed thirty or forty years ago by citizens, as is alleged, of this country, and in vessels owned and fitted out by them to cruise under the flag of Artigas, the noted Banda Oriental chief, for the redress of which unlawful acts the minister of Portugal assures the undersigned that his government has never ceased to hold that of the United States bound by well-known principles of the law of nations.

The undersigned is surprised at the re-appearance of these obsolete reclamations, accompanied by the renewal of the ancient proposition to appoint a joint commission to determine and assess damages, a proposition that was rejected at the time upon substantial grounds; and,

without the minister's assurance to that effect, the undersigned would not have supposed it credible that Portugal seriously cherished any intention to revive them. In reply, therefore, to the note which the
[164] minister of Her Most Faithful Majesty has presented in the name of his government, the undersigned must now, by the President's order, inform him that he declines re-opening the proffered discussion.

The correspondence referred to, between the Chevalier Corréa de Serra and the Secretary of State of the United States, was submitted, under their call, to the United States Senate, in 1824. The undersigned, after a careful perusal of it, has not been able to discover anything in it to warrant the assertion of the minister of Her Most Faithful Majesty, that the then Secretary of State of the United States, (Mr. Adams,) "convinced of the necessity," &c., consented to the suggestion then and repeatedly made, of appointing commissioners. On the contrary, the proposition was expressly declined by Mr. Adams, "as there was no precedent for the appointment of such a commission under such circumstances, and as not a single case of capture had been alleged, for which the United States were strictly responsible," as will be seen by examining his note to the Chevalier Corréa de Serra, of the 30th September, 1820; and again, that to M. Amado Grehon, of the 30th April, 1822, copies of which are herewith transmitted for the use of the minister and the government he represents.

Neither leisure nor inclination permits the undersigned to dwell upon the reasons which may have impelled Portugal to the extraordinary course she has adopted, at a juncture when the relations of the two countries have become invested with a critical interest; but the undersigned cannot close this note without remarking that the just claim of citizens of this country upon Portugal, which have recently, after many years of neglect, been either denied by that government, or met by propositions of reference to Lisbon merchants and others, will lose none of the merit which characterizes them, nor any portion of that protection which this Government has determined to extend to the claimants, by the sudden resuscitation of these unfounded pretensions.

The undersigned, &c.,

(Signed) JOHN M. CLAYTON.

No. 33.

Senhor de Figanière e Morão to Mr. Clayton.

WASHINGTON, *June* 6, 1850.

The Portuguese minister, undersigned, has had the honor to receive the note which, under date 30th ultimo, the Hon. John M. Clayton, Secretary of State of the United States, addressed to him in answer to his communication of the 25th of the same month, in which the undersigned, by order of his government, again presented to the American Government certain claims which had heretofore been matters of discussion between the two governments.

In this answer Mr. Clayton expresses his surprise at the re-appearance of these obsolete reclamations; can hardly credit that Portugal seriously cherishes any intention to revive them; adds that he declines re-opening the discussion, and concludes by stating that he has neither leisure nor inclination to dwell upon the reasons which may have im-

pelled Portugal to the extraordinary course she has adopted in resuscitating unfounded pretensions.

The undersigned cannot but regret some passages in the communication he has received, but he concludes himself justified in supposing that the honorable Secretary of State did not, in any of his remarks, mean to convey anything which could reflect upon the honorable motives and friendly intentions of Her Majesty's government, in placing before the American Government claims which it really believes to be well founded.

It is true that these claims are of long standing; but the Portuguese minister may remind the honorable Secretary of State that they are, notwithstanding, of a more recent date than one of the American claims, to which his government has given a most attentive investigation.

The undersigned will, however, abstain from going further into this argument, or from making any lengthened reply to Mr. Clayton's note, having referred the same to Her Majesty's government.

But he cannot omit to notice the part of the honorable Secretary's said note, which would call in question the accuracy of the undersigned's assertion, viz, that the United States Government at one time had considered in a favorable light the proposition to submit the Portuguese claims in question to commissioners to be appointed by both governments; and he begs to state that the grounds for his making this assertion are to be found in a dispatch of his honorable predecessor, the Chevalier Corréa de Serra, addressed to his government, which the undersigned is bound to presume is correct.

Her Most Faithful Majesty's government, at all events, wishes for nothing but that which is just and equitable, and has for this reason offered to refer all the claims presented by the United States Government against it to the arbitration of a third friendly and independent power; and is also desirous that all claims which it has against the United States should be likewise submitted to the same authority, that all pending matters in controversy between the two nations may at once and forever be set at rest; and although the undersigned has not failed to remark that Mr. Clayton considers the relations between Portugal and the United States invested at this moment with critical interest, he cannot but flatter himself that the termination of all differences between their two countries may be attained in the mode which he has suggested, inasmuch as it is in complete accordance with the fair and peaceful spirit of the present times, and also completely in harmony with the policy which has hitherto always directed and maintained, on the most friendly footing, the relations between the two governments.

The minister, &c.,

(Signed) DE FIGANIÈRE E MORÃO.

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[165] *No. 34.

Senhor de Figanière e Morão to Mr. Webster.

NEW YORK, *November* 7, 1850.

The undersigned, of Her Majesty's council, and minister resident of Portugal in the United States of America, has been instructed by his government to lay before the Honorable Daniel Webster, Secretary of

State of the said United States, the following statement in support of the claims of Portuguese subjects against the American Government, arising from capture of Portuguese vessels, with their cargoes, in the years 1816 down to so late as 1828, by privateers fitted out and equipped in ports of the United States, principally in that of Baltimore, and assuming to sail under the flag of South American insurgent states, especially that of Artigas.

Upwards of sixty Portuguese vessels, with their cargoes, were captured or plundered, and such ships and cargoes were appropriated by the captors to their own use.

The fitting out of these privateers at Baltimore was a matter of public notoriety, and many of the leading citizens there, including the sheriff and postmaster, were summoned before the courts as owners or interested in such privateers.

It is well known that the noted Banda Oriental chief, Artigas, held no sea-port, had no ships, no sailors, and the privateers assuming his unrecognized flag were mostly manned and commanded by citizens of the United States, and in some instances the officers held commissions in the Navy of the United States.

The undersigned begs leave to say, and he submits, that it was the duty of the United States Government to exercise a reasonable degree of diligence to prevent these proceedings of its citizens, and that having failed to do so, a just claim exists on the part of the government of Portugal in behalf of its despoiled subjects, against the United States, for the amount of losses sustained by reason thereof.

M. De Figanière would here recall to the Honorable Mr. Webster's attention the state of the negotiations between the two governments on this subject. So early as the year 1816 the Chevalier Corréa de Serra, His Most Faithful Majesty's plenipotentiary, apprised Mr. James Monroe, the then Secretary of State, of these illegal armaments in Baltimore. In March, 1818, that minister claimed indemnification by the Government of the United States for the losses sustained by Portuguese subjects from the captures made by the said privateers, to which application the Secretary of State, in a note dated the 14th of said March, replied that "the Executive having used all its power to prevent the arming of vessels in its ports against nations with whom it was at peace, and having put into execution the acts of Congress for keeping neutrality, it could not consider itself obliged to indemnify foreign individuals for losses arising from captures upon which the United States had neither command nor jurisdiction."

The undersigned willingly admits that if the Executive of the United States had used all its power to prevent the arming of vessels within its territory, and their sailing from its ports against the commerce of Portugal, no claim could have been set up by or in behalf of Portuguese subjects against the Government of the United States, but that the only remedy would have been against the wrong-doers, in the courts of law of the United States. But, in point of fact, the fitting out of these privateers was so notorious, that by due diligence on the part of the Government and the officers of the United States the evil might have been prevented.

The Chevalier Corréa, in another communication addressed to the Secretary of State, dated July 16, 1820, renewed his application, and proposed that the United States should appoint commissioners "with full powers to confer and agree with Her Majesty's ministers in what reason and justice demand."

In a further letter from that minister to Mr. J. Q. Adams, dated 26th

August of the same year, the names of the officers of the Navy of the United States are given, who, in October, 1818, embarked and served on board the armed schooner General Artigas. The said schooner sailed under the so-called Artigan flag, and cruised for many months on the coast of Brazil, capturing several Portuguese vessels, among others the Sociedade Felix, which was brought to Baltimore.

The names of said officers, as given by M. Corréa, were Lieutenants Peleg and Dunham, of Rhode Island, and Midshipman Augustus Swartout, of New York, and Benjamin S. Grimke, of South Carolina.

Mr. Adams, in a letter addressed to the Portuguese minister, dated the 30th of September, 1820, declines the appointment of commissioners as proposed, and intimates that the Portuguese subjects who may have suffered wrongs have a remedy in the courts of justice, but that "for any acts of the citizens of the United States, committed out of their jurisdiction and beyond their control, the Government of the United States is not responsible." Mr. Adams adds, that in the war in South America, to which Portugal had for several years been a party, "the Government of the United States had neither countenanced nor permitted any violation of neutrality by their citizens."

The undersigned, without intending to impute criminal negligence to the Government of the United States in this matter, may be permitted to observe, that citizens of the United States were permitted, whilst within their jurisdiction and under the control of the Government, to fit out armed vessels to go forth from the ports of the United States, filled with American citizens, to prey upon the commerce of Portugal.

Her Most Faithful Majesty's government and the undersigned will readily admit that the Government of the United States did not support or countenance these proceedings, which were in direct violation of the laws of nature, of nations, and of the United States; but it is conceived that the American Government was, to a certain extent, remiss in not using more efforts in supressing these expeditions, and that a liability results from that remissness. In April, 1822, M. José A. Grehon, chargé d'affaires of Portugal, in a letter to the Secre-
[166] tary of State of that day, requires that *commissioners should be "chosen by both governments, for the purpose of arranging the indemnities justly due to Portuguese citizens, for the damages which they have sustained by reason of piracies, supported by the capital and the means of the United States."

To this application the Secretary of State replied, on the 30th of April, 1822, that he could not accede to the appointment of commissioners for the purpose stated, and says, "It is a principle well known and understood, that no nation is responsible to another for the acts of its citizens, committed without its jurisdiction, and out of the reach of its control."

Mr. Webster will not fail to perceive that the complaint is really grounded upon the acts of American citizens, committed within the jurisdiction of the United States, and within the reach of the control of their Government; that is to say, the fitting out of armaments within the ports of the United States, to despoil Portuguese commerce.

This subject has, since the above date, been repeatedly renewed verbally, if not in the correspondence of Messrs. T. S. Constancio, J. Banozo Perura, and Torlades d'Azambuja, down to 1835; and upon the renewal of the old claim of the United States against Portugal, both the undersigned and his government have repeatedly adverted to these long-standing and vastly more important counter-claims.

The law of nations on this subject does not appear to be at all doubt-

ful. It is laid down by Vattel (b. ii, ch. v, secs. 72–77) that "the nation, or the sovereign, ought not to suffer the citizens to do an injury to the subjects of another state, much less to offend that state itself, and this not only because no sovereign ought to permit those who are under his command to violate the precepts of the law of nature, which forbids all injuries, but also because nations ought mutually to respect each other, to abstain from all offense, from all injury, from all wrong, in a word, from everything that may be of prejudice to others. If a sovereign, who might keep his subjects within the rules of justice and peace, suffers them to injure a foreign nation, either in its body or its members, he does no less injury to that nation than if he injured it himself. In short, the safety of the state and that of human society requires this attention from every sovereign: if you let loose the reins of your subjects against foreign nations, these will behave in the same manner to you, and instead of the friendly intercourse which nature has established between all men, we shall see nothing but one vast and dreadful scene of plunder between nation and nation."

It appears to the undersigned that the only question to be examined is, whether the Government of the United States could, by the exercise of a reasonable degree of diligence, have prevented its citizens from going out of its ports in armed vessels to cruise against the commerce of Portugal, a friendly nation with which the United States had ever been at peace, and had uninterrupted commercial relations.

The law of nations, as understood in modern times, is laid down with accuracy in the report (No. 290) of the 10th of January, 1818, of the Committee of Foreign Relations, Fifteenth Congress, first session:

"It is a matter of public notoriety," it says, "that two of the persons who have held successively the command at Amelia Island, whether authorized themselves by the Government or not, have issued commissions for privateers, as in the name of the Venezuelan and Mexican governments, to vessels fitted out in the ports of the United States, and chiefly manned and officered by our own countrymen, for the purpose of capturing the property of nations with which the United States are at peace. The immediate tendency of suffering such armaments, in defiance of our laws, would have been to embroil the United States with all nations whose commerce with our country was suffering under these depredations, and, if not checked by all means in the power of the Government, would have authorized claims from the subjects of foreign governments for indemnification at the expense of this nation, for captures by our people in vessels fitted out in our ports, and, as could not fail to be alleged, countenanced by the very neglect of the necessary means of suppressing them." (American State Papers, vol. iv, page 133.)

The undersigned respectfully states that the captures in question were made by American citizens, in vessels fitted out in ports of the United States, and that the fitting out of these vessels, he verily believes, was "not checked by all the means in the power of the Government," but that there was a "neglect of the necessary means of suppressing" those expeditions.

The public notoriety of these expeditions is easily shown. A reference to Niles's Register, and other organs of public information published in those times, will suffice for this purpose; and nothing was more generally known at Baltimore than that these expeditions were commonly fitted out at that port. Indeed, privateers were not only equipped in Baltimore, but they were accustomed to bring their captures there for sale. The Government of the United States might, by the exercise of due diligence, have become acquainted with the facts, and prevented the privateers from sallying forth.

The chief Artigas did not possess a single sea-port, as has been stated, and the so-called privateers gave no security that they would conduct their cruises according to the laws and usages of war, and bring in their prizes for adjudication. They were rather pirates than privateers, and, it is respectfully submitted, the Government of the United States should have exerted itself so as efficiently to prevent their repeated and long-continued depredations. There were a large number of these so-called privateers, at least twenty-eight or thirty, preying upon the commerce of Portugal.

The authorities of the State of Maryland were evidently negligent in permitting these warlike preparations in the port of Baltimore, and as no claim can be made by Portugal against that State, all complaints founded upon the negligence of the State authorities must, of course, be made against the Government of the United States, and this Government is, therefore, as the undersigned conceives, liable for that neglect.

As already stated, in some instance the privateers brought their prizes into the ports of the United States, and the cargoes were sold, and upon such cargoes duties were levied and paid as upon a regular importation.

The undersigned conceives that justice demands these duties,
[167] with interest, *should be returned to Her Majesty's government for the use of the parties interested in such cargoes.

M. de Figanière would here beg leave to state, by way of example, the particulars of one of the captures complained of. The ship Monte Alegre, measuring over 800 tons, with a very valuable cargo of colonial produce, was captured on the 5th of June, 1820, on her voyage from Bahia to Lisbon, in the waters of Azores, by the privateer brig La Fortuna, under the command of John Chace, and taken to Baltimore. Judicial proceedings were instituted in that city against the said captain and owners of the La Fortuna, and her prize and cargo were attached. It was proved that the captured property was Portuguese, and that the privateer had been armed and equipped at Baltimore, and had sailed from that port, where her owners and commander, citizens of the United States, resided. It was accordingly adjudged that the capture was unlawful; but it is clear that this adjudication does not in any manner affect the cause of complaint against the United States Government for the want of due diligence on the part of the authorities of the United States in not preventing the La Fortuna (which made many other valuable captures) from being fitted out as aforesaid.

In every instance, the undersigned believes, the claims of the Portuguese subjects, presented in the courts of the United States against private individuals, citizens of the United States, who were concerned in such captures, were unavailing; sometimes from the failure of the purchasers of the prizes or cargoes to pay the purchase-money, such sales being made by orders of the courts, and credit given to the purchasers under such judicial sales; and often in consequence, as has been represented to the undersigned, of the overwhelming influence of the interested parties against the foreign claimant.

To use the language of the Committee on Foreign Relations, before referred to, "the subjects of Her Majesty are entitled to indemnification at the expense of the United States, if the privateering or piratical expedition in question were not checked by all the means in the power of the American Government." And although the parties injured might also prosecute the wrong-doers, either civilly or criminally, in the courts of the United States, this right by no means interferes with, the undersigned will repeat, or detracts from, the claim upon the Government of the United States, founded upon the reason before referred to.

Indeed, in almost every case, the right to sue the wrong-doers would be but a merely nominal remedy. It could scarcely ever happen that either the value of the ship and cargo captured could be recovered from the privateers, and in no case would the losses sustained by the failure of the adventure and the loss of the liberty of the crews be compensated for.

M. de Figanière begs again to submit, in the name of his government, to the Honorable Daniel Webster, the former proposition as the only proper course which suggests itself to his mind, in order to arrive at a just and equitable conclusion of this long-pending matter; that commissioners should be appointed to ascertain what Portuguese ships and cargoes were captured by private armed vessels belonging to ports of the United States, and owned, commanded, and equipped by inhabitants of the said States, and the value of such ships and cargoes, and the damage sustained by reason of such captures; and that the amount thereof be paid by the Government of the United States to the government of Portugal for the relief of the parties injured.

It is further submitted that the only questions to be left for the decision of the commissioners should be the questions of fact just adverted to. The correctness of the general proposition laid down by the Committee on Foreign Relations, in reference to the liability of the United States for its neglect of the necessary means of checking privateering or piratical expeditions, will, it is conceived, be readily conceded by the Government of the present day.

The only question, then, remaining for determination is, whether the privateering expeditions from the port of Baltimore and other ports of the United States might not have been prevented by either the State or Federal authorities, if that diligence which the nature of the ship demanded had been used.

It appears to the undersigned that the question can admit of but one answer, and that in favor of the claims in question.

A list of some of the captures made by American privateers, sailing under the so-called Artigan and other South American insurgent flags, is presented herewith. The value of the ships and cargoes amounts, the undersigned computes, to near $2,000,000, not including damages and interest.

The necessary evidence in support of the claims will be furnished to the aforesaid commissioners who may be appointed to examine the testimony, if the principle for which the undersigned contends be admitted, as he trusts it will be, by the Government of the United States.

The undersigned, &c.,

(Signed) DE FIGANIÈRE E MORAO.

A list of the Portuguese vessels which, with their cargoes, were either wholly captured or partly plundered by American vessels, mostly under the flag of Artigas, between the years 1816 and 1828, extracted from the authenticated documents, &c., in the archives of the Portuguese legation in Washington, the collective amount of loss arising therefrom exceeding $1,500,000 principal.

SHIPS.

San João Baptista.	Santa Maria Vencedora.
Marquis de Pombal.	Conde de Cavalleiros.
Paquete de Porto.	Sociedade Feliz.
Ceres.	Logó-ehó-dirie.
Rainha de los Anjos.	Perola.
San João Protector.	Princeza Carlota.

Monte Alegre.
Lord Wellington.
Maria de Lisboa.
Luiza.
Don Pedro d'Alcantara.
Ninfa de Lisboa.
[168] *Rainha des Mares.
Carlotta.
Don Miguel Forjaz.
Jardinura.
Don João VI.
Triumfo d'America.
Almirante Pacheco.
Principe Real.
Gran-Para.
Carolina.
União de America.

BRIGS.

Serpuete.
Kalmuca.
Thalia.
General Sampaio.
Globe.
Senhora de Carmo.
Silveira.
Avizo do Douro.
Pombinha.
Tres Coracoens.
San João Augusto.
Nova Aurora.
Sam Francisco d'Assis.
Vasco da Gama.
Voluntario.
Don Sebastian, (government packet.)
Bôa Esperanza.
Amante Feliz.
Paquete Castro-Marim.
Fenix.
União.
Senhora de Alivio.

SCHOONERS.

Feliz Victoria.
Flor de Santa Catherina.
Nossa Senhora da Piedade.
Flora.
Flôr de Rio da Prata.
Luritamia Felix.
Aquia de Leina.
Flôr de Murta.
Medéa.
Montevideo.

REPORT

OF

THE NEUTRALITY LAWS COMMISSIONERS:

TOGETHER WITH

AN APPENDIX

CONTAINING

REPORTS FROM FOREIGN STATES AND OTHER DOCUMENTS.

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[3] *COMMISSION.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith:

To our right trusty and well-beloved Councillor Robert Monsey Baron Cranworth; our right trusty and well-beloved Richard Monckton Baron Houghton; our right trusty and well-beloved Councillor Sir Hugh McCalmont Cairns, knight, a judge of the court of appeal in chancery; our right trusty and well-beloved Councillor Stephen Lushington, doctor of civil law, judge of the high court of admiralty; our right trusty and well-beloved Councillor Sir William Erle, knight; our trusty and well-beloved Sir George William Wilshere Bramwell, knight, one of the barons of the court of exchequer; our trusty and well-beloved Sir Robert Joseph Phillimore, knight, doctor of civil law, our advocate general; our trusty and well-beloved Sir Roundell Palmer, knight; our trusty and well-beloved Travers Twiss, doctor of civil law; our trusty and well-beloved William George Granville Venables Vernon Harcourt, esquire, one of our counsel learned in the law; our trusty and well-beloved Thomas Baring, esquire; our trusty and well-beloved William Henry Gregory, esquire, and our trusty and well-beloved William Edward Forster, esquire, greeting:

Whereas we have deemed it expedient that a commission should forthwith issue to inquire into and consider the character, working, and effect of the laws of this realm, available for the enforcement of neutrality during the existence of hostilities between other states with whom we are at peace; and to inquire and report whether any and what changes ought to be made in such laws for the purpose of giving to them increased efficiency and bringing them into full conformity with our international obligations.

Now know ye, that we, reposing great trust and confidence in your knowledge and ability, have authorized and appointed, and do by these presents authorize and appoint you the said Robert Monsey Baron Cranworth, Richard Monckton Baron Houghton, Sir Hugh McCalmont Cairns, Stephen Lushington, Sir William Erle, Sir George William Wilshere Bramwell, Sir Robert Joseph Phillimore, Sir Roundell Palmer, Travers Twiss, William George Granville Venable Vernon Harcourt, Thomas Baring, William Henry Gregory, and William Edward Forster, to be our commissioners for the purposes aforesaid.

And for the better effecting the purposes of this our commission, we do by these presents give and grant to you, or any five or more of you, full power and authority to call before you such persons as you shall judge likely to afford you any information upon the subject of this our commission, and also to call for, have access to, and examine all such books, documents, registers, and records as may afford the fullest information on the subject, and to inquire of and concerning the premises by all other lawful ways and means whatsoever.

And we do by these presents will and ordain that this our commission shall continue in full force and virtue, and that you our said commis-

sioners, or any five or more of you, may from time to time proceed in the execution thereof, and of every matter and thing therein contained, although the same be not continued from time to time by adjournment.

[4] *And we do further ordain that you, or any five or more of you, may have liberty to report your proceedings under this commission from time to time, if you should judge it expedient so to do.

And our further will and pleasure is that you do, with as little delay as possible, report to us under your hands and seals, or under the hands and seals of any five or more of you, your opinion upon the several points herein submitted for your consideration.

And for your assistance in the due execution of this our commission, we have made choice of our trusty and well-beloved Francis Phipps Onslow, esquire, barrister at law, to be secretary to this our commission, and to attend you, whose services and assistance we require you to use from time to time as occasion may require.

Given at our Court at St. James's, the thirtieth day of January, 1867, in the thirtieth year of our reign.

By Her Majesty's command.

S. H. WALPOLE.

*REPORT.

To the Queen's Most Excellent Majesty:

We, your Majesty's commissioners, appointed "to inquire into and consider the character, working, and effect of the laws of this realm available for the enforcement of neutrality during the existence of hostilities between other states with whom Your Majesty is at peace, and to inquire and report whether any and what changes ought to be made in such laws for the purpose of giving to them increased efficiency and bringing them into full conformity with Your Majesty's international obligations," have now to state to Your Majesty that we have held twenty-four meetings, and having inquired into and considered the subject so referred to us, have agreed to the following report:

The statute now available for the enforcement of neutrality during the existence of hostilities between states with whom Your Majesty is at peace is the 59 Geo. III, c. 69, commonly called the "foreign-enlistment act." The title of that act is, "An act to prevent the enlisting or engagement of His Majesty's subjects to serve in foreign service, and the fitting out or equipping in His Majesty's dominions vessels for warlike purposes without His Majesty's license." And the preamble runs thus: "Whereas the enlistment or engagement of His Majesty's subjects to serve in war in foreign service without His Majesty's license, and the fitting out and equipping and arming of vessels by His Majesty's subjects without His Majesty's license for warlike operations in or against the dominions or territories of any foreign prince, state, potentate, or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province, or against the ships, goods, or merchandise of any foreign prince, state, potentate, or persons as aforesaid, or other subjects, may be prejudicial to and tend to endanger the peace and welfare of this kingdom: And whereas the laws in force are not sufficiently effectual for preventing the same."

This, then, being the statute directly available in this country for the enforcement of neutrality, our duty has been to inquire and report whether it is susceptible of any and what amendments, and we are of opinion that it might be made more efficient by the enactment of provisions founded upon the following resolutions:

I. That it is expedient to amend the foreign-enlistment act by adding to its provisions a prohibition against the preparing or fitting out in any part of Her Majesty's dominions of any naval or military expedition to proceed from thence against the territory or dominions of any foreign state with whom Her Majesty shall not then be at war.

II. That the first paragraph of section 7 of the foreign-enlistment act should be amended to the following effect:

If any person shall within the limits of Her Majesty's dominions—

(*a.*) Fit out, arm, dispatch, or cause to be dispatched, any ship with

intent or knowledge that the same shall or will be employed in the military or naval service of any foreign power in any war then being waged by such power against the subjects or property of any foreign belligerent power with whom Her Majesty shall not then be at war;

(*b.*) Or shall within Her Majesty's dominions build or equip any ship with the intent that the same shall, after being fitted out and armed either within or beyond Her Majesty's dominions, be employed as aforesaid;

(*c.*) Or shall commence or attempt to do, or shall aid in doing, any of the acts aforesaid, every person so offending shall be deemed guilty of a misdemeanor.

[6] *III. That in order to enable the executive government more effectually to restrain and prevent attempted offenses against section 7 of the foreign-enlistment act, additional provisions, to the following effect, should be inserted in the statute:

(*a.*) That if a secretary of state shall be satisfied that there is a reasonable and probable cause for believing that a ship which is within the limits of Her Majesty's dominions has been or is being built, equipped, fitted out, or armed contrary to the enactment, and is about to be taken beyond the limits, or that the ship is about to be dispatched contrary to the enactment, such secretary of state shall have power to issue a warrant stating that there is such a reasonable and probable cause for believing as above, aforesaid, and upon such warrant the commissioners of customs, or any other person or persons named in the warrant, shall have power to arrest and search such ship, and to detain the same until it shall be either condemned or released by process of law, or in manner hereinafter mentioned.

(*b.*) That the power hereinbefore given to a secretary of state may, in parts of Her Majesty's dominions beyond the seas, be exercised by the governor or other person having chief authority.

(*c.*) That power be given to the owner of the ship or his agent to apply to the court of admiralty of the place where the ship is detained, or, if there be no such court there, to the nearest court of admiralty for its release.

(*d.*) That the court shall put the matter of such detention in course of trial between the applicant and the Crown, with usual admiralty appeal to the privy council.

(*e.*) That if the owner shall establish to the satisfaction of the court that the ship was not and is not being built, equipped, fitted out, or armed, or intended to be dispatched, contrary to the enactment, the ship shall be released and restored.

(*f.*) That if the owner shall fail to establish to the satisfaction of the court that the ship was not, and is not being, built, equipped, fitted out, or armed, or intended to be dispatched, contrary to the enactment, then the ship shall be detained till released by order of the secretary of state; nevertheless the court may, if it shall think fit, order its release, provided the owner shall give security to the satisfaction of the court that the ship shall not be employed contrary to the enactment, and provided that no proceedings are pending for its condemnation.

(*g.*) That if the court should be of opinion that there was not reasonable and probable cause for the detention, and if no such cause shall appear in the course of the proceedings, the court shall have power to declare that the owner ought to be indemnified by the payment of costs

and damages, which in that case shall be payable out of any moneys legally applicable by the commissioners of the treasury for that purpose.

(*h.*) That any warrant of the secretary of state shall be laid before Parliament.

(*i.*) That the proceedings herein provided shall not affect the power of the Crown to proceed, if it thinks fit, to the condemnation of the ship.

(*k.*) That the following exceptions be made from this resolution: 1. Any foreign commissioned ship; 2. Any foreign non-commissioned ship dispatched from this country after having come within it under stress of weather or in the course of a peaceful voyage, and upon which ship no fitting out or equipping of a warlike character shall have taken place in this country.

IV. That it is expedient to make the act of hiring, engaging, or procuring any person within Her Majesty's dominions to go on board any ship, or to embark from any part of Her Majesty's dominions by means of false representations as to the service in which such persons are intended to be employed, with intent on the part of the persons so hiring, engaging, or procuring, as aforesaid, that the person so hired, engaged, or procured, as aforesaid, shall be employed in any land or sea service prohibited by section 2 of the foreign-enlistment act, a misdemeanor punishable, like other misdemeanors, under the same section.

V. That the forms of pleading in informations and indictments under the foreign-enlistment act should be simplified.

VI. That if, during the continuance of any war in which Her Majesty shall be neutral, any prize not being entitled to recognition as a commissioned ship of war shall be brought within the jurisdiction of the Crown by any person acting on behalf of or under the authority of any belligerent government, which prize shall have been captured by any vessel fitted out during the same war for the service of such government, whether as a public or a private vessel of war, in violation of the laws for the protection of the neutrality of this realm, or if any such
[7] prize shall be *brought within the jurisdiction, as aforesaid, by any subject of the Crown, or of such belligerent government, having come into possession of such prize with notice of the unlawful fitting out of the capturing vessel, such prize should, upon due proof in the admiralty courts at the suit of the original owner of such prize or his agent, or of any person authorized in that behalf by the government of the state to which such owner belongs, be restored.

VII. That in time of war no vessel employed in the military or naval service of any belligerent which shall have been built, equipped, fitted out, armed, or dispatched contrary to the enactment, should be admitted into any port of Her Majesty's dominions.

In making the foregoing recommendations, we have felt ourselves bound to consider whether we were exceeding what could actually be required by international law, but we are of opinion that if those recommendations should be adopted, the municipal law of this realm available for the enforcement of neutrality will derive increased efficiency, and will, so far as we can see, have been brought into full conformity with Your Majesty's international obligations.

We have thought it better to present our recommendations in the

form of general resolutions laying down the principles on which legislation should be framed rather than to attempt to draw up in detail the precise form of the statute.

We have subjoined, in an appendix to this report, certain papers relating to the laws of foreign countries on this subject, which have been communicated to us by Your Majesty's secretary of state for foreign affairs, together with a short historical memorandum prepared by Mr. Abbott[1] for our information, and some other documents illustrative of the subject.

All which we submit to Your Majesty's gracious consideration.

CRANWORTH.	[L. S.]
HOUGHTON.	[L. S.]
CAIRNS.	[L. S.]
W. ERLE.	[L. S.]
G. W. W. BRAMWELL.	[L. S.]
R. J. PHILLIMORE.	[L. S.]
ROUNDELL PALMER.	[L. S.]
T. TWISS.	[L. S.]
W. VERNON HARCOURT.	[L. S.]
T. BARRING.	[L. S.]
W. H. GREGORY.	[L. S.]
W. E. FORSTER.	[L. S.]

Dr. Lushington did not sign the report, as he was, from indisposition, unable to attend the meetings after June, 1867.

REASONS GIVEN BY MR. VERNON HARCOURT FOR DISSENTING FROM CERTAIN PORTIONS OF THE REPORT.

Though the undersigned has signed the report, he wishes it to be understood that he has only signed it subject to the following observations:

In the main part of the recommendations of the report, I entirely concur, more especially in those which have for their object to increase the efficiency of the power of the executive government to restrain attempted violations of the neutrality of the country.

[8] *The portions of the report with respect to the policy of which I entertain considerable doubt are those parts of Resolution II, § b, and Resolution III, § a, the first of which extends the punitive power of the law, and the second the preventive authority of the executive, to the building of ships, apart from the question of their arming or dispatch from the realm.

My apprehension is lest such an extension of the law should unnecessarily, and if unnecessarily then unwisely, interfere with the ship-building trade of the country. It is needless to enlarge on the capital importance of that trade. As a commercial question it is one of the greatest consequence. It is, perhaps, the trade in which alone Great Britain still retains an unrivaled superiority. Everything which tends unnecessarily to hamper or embarrass it must be regarded with suspicion and adopted with caution. It is not of course argued that the interests of a trade, however valuable, should not yield to considerations of im-

[1] Mr. C. S. A. Abbott, of the foreign office, was attached to the commission and in attendance at the meetings.

perial necessity, and of international obligation, if there be such an obligation. But this particular branch of trade has a special national value which belongs to hardly any other. Upon it depend in no small degree those naval resources which constitute the main defense of the realm. I believe it is the fact that at the present moment by far the greater proportion of the existing iron-clad navy of Great Britain has been constructed in the yards of private ship-builders. These private yards have been created and are maintained at no expense to the nation by the custom of foreign states. Most of the powers of Europe rely for their naval construction on the private yards of English ship-builders. In this respect, therefore, apart from the commercial question, the nature of this trade involves public consequences of the utmost political importance. The monopoly of the construction of the iron-clad navies of the world has become a new and gigantic arm of our maritime superiority. England has become, and is daily still more becoming, the naval dock-yard of Europe. One effect of discouraging this trade must be either that foreign powers will construct for themselves, or else that some other nation whose restrictions are less rigid and whose trade is more free shall construct for them. Either alternative will deprive Great Britain of a great and special national advantage, which she now enjoys owing to her manufacturing skill and her peculiar resources in coal and iron. If England should unhappily be engaged in an European war we should lose the incalculable benefit of the control we now possess over the naval reserves of Europe. All these reservoirs of naval construction which the demands of foreign governments at present support in this country, can now in case of need be diverted from the foreign supply and be made immediately available for our own defense. If this trade is discouraged and possibly destroyed, the consequences are obvious. Foreign governments must build for themselves the vessels we now build for them. They will, therefore, be independent of this country in a manner which they now are not. Or they will build elsewhere, and the country to which they resort will then acquire the advantage we shall lose. This will be the first result. But the indirect effect on our own resources will be equally serious. At present, in time of peace, we are able to limit ourselves to comparatively moderate, though still enormously expensive, public establishments, because we know that in time of war the private yards will supplement our resources to an almost unlimited extent. But, if this private trade should cease or be seriously diminished, we must keep up constantly in time of peace such establishments as will be adequate to our utmost wants in time of war. The whole reserve of constructing-power which we now possess in the private yards must be supplied by the public establishments. And consequently all that expenditure in plant, machinery, and the maintenance of skilled workmen, which is now defrayed by the custom of the foreigner in the private yards, must in future be permanently sustained out of the public taxation. Few people conversant with the subject will dispute that if the yards which now manufacture iron-clads for the world were abolished, the navy estimates must be largely increased in order to establish and keep on foot equal means of construction in the public dock-yards. We have a dozen private yards in the country which could in a limited time turn out vessels as powerful as any in the English navy, and which have in fact constructed many of the best ships we possess. Relying on this reserve of producing-power we are able to economize our resources and to diminish our stock. But if these establishments cease we must always be prepared to supply their place at a far greater cost to the country. It is also deserving of consideration

that the competition of these private yards among one another and with the government dock-yards, keeps up probably a higher standard of excellence than could be obtained by mere official supervision.

It will, therefore, be seen that the question is by no means one of the interest of private ship-builders, but does in fact involve a great question of national resource and public economy.

It is worthy of remark that when in the year 1817 the Congress of
[9] the United States* were called upon to alter and amend their foreign-enlistment act, the bill as reported by the Committee of Foreign Affairs in the House of Representatives bore the following title:

A bill *to prevent citizens of the United States from selling vessels of war to the citizens or subjects of any foreign power*, and more effectually to prevent the arming and equipping vessels of war in the ports of the United States, intended to be used against nations in amity with the United States.

By the first section, "if any citizen of the United States . . . . shall fit out and arm . . . . any private ship or vessel of war, *to sell* the said vessel or *contract for the sale* of said vessel *to be delivered in the United States or elsewhere to the purchaser*, with intent . . . . to cruise or commit hostilities upon the subjects . . . . of any prince or State with whom the United States are at peace, such person shall be punished" with fine and imprisonment, &c.

This bill was much discussed in the Senate, and in the end the first section above quoted was struck out, and the title of the statute altered accordingly. (These facts are stated on the authority of a letter of Mr. Bemis, of Boston, published in 1866.) The legislature of the United States have thus, it will be seen, deliberately declined to interfere with the commerce of that country in vessels of war. It may be worthy of consideration, having regard for these facts, whether the result of the proposed interference with the ship-building trade of England may not be to transfer to America the whole of the custom of foreign states.

But it will be argued that if the equipping, arming, and dispatching of such vessels is to be prohibited, it is necessary on the principle of *obsta principiis* to extend the prohibition to the earlier stages of the transaction. That reasoning does not carry conviction to my mind; the arming, equipping, and dispatching are conspicuous acts directly and obviously connected with the belligerent intent. To build is nothing unless the vessel be armed and dispatched; it is in these acts that the real breach of neutrality consists. The law should lay its hand on the immediate offense, and not be astute to search out its remote sources and springs. To attempt to do so involves consequences which will be politically difficult and dangerous.

The great advantage of the summary and extensive preventive powers which the present report recommends should be conferred on the Executive to stay the dispatch of vessels which may compromise our neutrality, is that they supply a reason which might justify us in mitigating the strictness of the penal code rather than an argument for augmenting its rigor. The notorious indisposition of juries to enforce such penalties creates a mischief which should be avoided. We may sustain the great inconvenience of making laws which we shall find it practically impossible to execute, because they exceed in severity the standard of public opinion. The present report recommends the creation of an absolute, and I conceive a sufficient, power to stop all vessels which ought to be stopped. The case of the Birkenhead rams, stopped by Earl Russell, is an instance of the exercise of the sort of power

which it is the object of these recommendations to make more effectual and easy. As soon as reasonable grounds of suspicion arise, the power will be put in force. But assuming the vessel to be stopped, if there remains behind a statute which makes the original building penal, how are we to justify not proceeding to prosecute the builders after the vessel is stopped? If such a prosecution is not instituted, the law is brought into contempt; if it is instituted, the law will probably break down—results in either case to be greatly deprecated. When juries are called upon to inflict upon their own countrymen, on behalf of foreigners, severe penalties for acts which are not punished, but are held lawful in all other countries, is it not more than probable that popular sentiment will correct the severity of the law?

It must be remembered that in adding the word "building" to the penal part of the act we are distinctly creating a *new crime*. We are making our own subjects liable to criminal penalties for acts which are clearly lawful by the law of nations, which are lawful by the law and practice of all nations, and which have hitherto been lawful by the law and practice of our own people. We shall have not only to enact a new crime which does not exist, but to create an opinion and conscience of criminality which it is more difficult to inspire.

The authors of the English foreign-enlistment act distinctly declined to carry back the offense to a period of the transaction which in no way partook of an offensive character and had no obvious or necessary connection with an attitude of war. The American Government equally, after mature consideration, refused to adopt the alteration now proposed. They did so, upon principles of policy, by departing from which we may involve ourselves in inextricable difficulties, and probably not command on the part of other nations any corresponding reciprocity. It
[10] may be urged that while it is proposed *to confer these extended powers, a large discretion is left to the Government to determine how far they shall be put in operation. But as a fact, this discretion will be more nominal than real; and with a view of precluding international complaints, it will be absolutely null. Whatever power is conferred, in effect creates an obligation on the part of the Government to put it in force, and a responsibility on the part of the nation if any neglect to enforce it should occur. If the government are authorized to interfere by prosecution and seizure at all stages of the building, then, at the first suggestion of any belligerent power, they will be compelled, almost without discretion, to interfere, because, should they decline to do so, their responsibility, and that of the nation, will be involved, even by an error of judgment, in a case where the obligation is admitted. Thus we shall be made liable for acts for which at present no nation would hold us responsible. The reason why it has been considered inexpedient and impossible to enforce a prohibition of the exportation of munitions of war from the neutral territory is because to do so would involve a system of repression and *espionage* on the part of the neutral government which would be wholly intolerable to the trade of its subjects. If the thing is forbidden it is the duty of the neutral government to see that the prohibition is in fact enforced. But in order to enforce it we must establish on every occasion of war in foreign countries a sort of belligerent excise in the bosom of our own people. And this is precisely the evil in which we shall involve ourselves by undertaking to prohibit "building" with an unlawful intent. If we create and assume this duty, we are bound to execute it, and in order to execute it we must ascertain at our own peril the intent and the future destination of every keel laid in the United King-

dom and even in our most distant possessions. If this is done honestly and efficiently, it will place the whole ship-building trade under a supervision of a most odious and oppressive description, which would hardly be endured even for the security of our own interests, and certainly will not be tolerated for the advantage of foreign states.

There are those who reconcile themselves to such a course by supposing that in fact this new crime would never practically be prosecuted in its early stage. If so, then to what purpose is it created? But, in fact, if it is made a crime, the neutral government must proceed against it in its earliest inception, at the risk of being held responsible for what may happen in its further progress. There is an immense difference in this respect between the offense of arming and fitting out, which, especially in modern warfare, is a fact sufficiently obvious and patent, and may be easily detected in time to prevent the dispatch of the vessel. But if all building with a certain intent is to be constituted a crime which it is part of the duty of the government to repress, then there is not a keel laid, a bolt driven, or plank sawn in any yard in the country which may not at every instant be exposing the nation to a responsibility hitherto unknown.

The objections which forcibly strike me are these:

(1.) We shall create a new duty which it will be difficult and probably impossible to execute.

(2.) In creating such a duty we shall incur a new responsibility by its non-execution.

(3.) The attempt to execute it will be odious to our own subjects, and the failure to execute it will be a just ground of complaint to foreign states.

(4.) We shall be placing the trade of our own country at an uncalled-for disadvantage as compared with that of the rest of the world.

Either the creation of this new offense will or will not tend to embarrass and injure the ship-building trade of the country. If it will not, (as some believe,) it would be satisfactory that this should be clearly established. I confess if I were satisfied of this, my objections to the course proposed would be in a great measure removed. But if, as I believe, the necessity of a perpetual official supervision and interference would greatly hamper and probably ultimately destroy this branch of our commerce, that again is a point on which I think the nation has a right to expect that we should afford them the means of forming sound judgment. It may be that for adequate objects we should be willing to sacrifice such a trade. But it is well that we should estimate the amount of the sacrifice, being as it is wholly gratuitous and without example in the case of other nations. I regret that the commission have not taken evidence to show how far the proposed prohibition would in fact affect this particular trade and the general naval resources of the country. I venture to think that before any legislation on this matter is attempted, such an inquiry should be instituted. If the preventive powers of detention recommended in the report are (as I believe) sufficient for all practical purposes and the performance of all legitimate duties, every argument of policy would dissuade us from carrying the law any further.

I entirely share the desire to make abundant provision that the duties of neutrality should be honestly, fully, and effectually carried
[11] out. But in creating new duties, which *do not at present exist either in principle, precedent, or practice, it is worth while to consider whether by exaggerating the obligations of neutrality we are

not creating a discouragement to its practice. We may end by making the duties of neutrality so irksome and intolerable, that, on a mere calculation of expediency, a prudent government would prefer to go to war. And thus we may defeat the end we have in view by the means we adopt to attain it.

There is one condition of things for which it seems especially necessary to make provision. A contract may be made by a foreign government for the building in this country of an iron-clad in time of peace and without any contemplation of present war. Such vessels require many months for completion and their cost is enormous. The foreign government may have paid several hundred thousand pounds by installments during the construction of the vessel, and the property in the incomplete vessel will have passed to the foreign government. What is to be done to such a vessel in case the contracting government is involved subsequently in war. Is the vessel to be forfeited and the builder to be prosecuted because he proceeds with a contract which was perfectly lawful when it was made? If so, what chance is there for the future that any foreign government will ever build in England, or indeed that any English builder will venture to undertake their contracts? This singular state of things might easily arise. The recent war between Austria and Prussia lasted less than two months; a vessel might have been contracted for by one of those governments with an English shipbuilder; the vessel might have been half finished before the war, and wholly completed after the war; in respect of the work done before the war and after the war, *i. e.*, for the beginning and ending of the ship, the ship-builder would be innocent; but in respect of the work done during the few weeks of the war, *i. e.*, for the middle of the ship, he would be guilty of a misdemeanor and subject to fine and imprisonment. This may seem an extreme illustration, but it shows the necessity of providing some protection for contracts *bona fide* made and commenced in time of peace, unless it is intended wholly to prohibit the trade.

There is one other matter which I should gladly have seen embodied in the recommendations of the report. A strong feeling has recently grown up against the recognition of belligerent commissions granted to vessels on the high seas, by which such vessels become at once raised to the position of lawful belligerent cruisers, though they start from no belligerent port, and, in fact, derive no support from the natural and legitimate naval resources of those on whose behalf they wage war. It seems to me that for all reasons it is wise to discourage such a practice. As there is no rule of international law which forbids such delivering of commissions on the high seas, we cannot of course refuse to recognize the title of such a cruiser to all the legitimate rights of war in places beyond our jurisdiction. But we are masters of our own actions and our own hospitality within the realm. Though, therefore, we cannot dispute the validity of such a commission on the high seas, or the legality of captures made by such a vessel, we may refuse to admit into our ports any vessel which has not received its commission in a port of its own country. By so doing we should be acting strictly within the principles of the law of nations, and our example would very probably be followed by other maritime states, and thus in the end tend to repress the practice altogether. For this purpose I should have been very glad if the commission had thought fit to recommend that in time of war no armed vessel engaged in hostilities should be admitted into any of our ports which should not hold a commission delivered to it in some port of military or naval equipment actually in the occupation of the government by which she is commissioned.

W. V. HARCOURT.

*APPENDIX.

Appendix No. I.

BRITISH FOREIGN-ENLISTMENT ACT.

(59 George III, cap. 69, July 3, 1819.)

Cap. LXIX.—An Act to prevent the enlisting or engagement of His Majesty's subjects to serve in foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes, without His Majesty's license.

Whereas the enlistment or engagement of His Majesty's subjects to serve in war in foreign service, without His Majesty's license, and the fitting out and equipping and arming of vessels by His Majesty's subjects, without His Majesty's license, for warlike operations in or against the dominions or territories of any foreign prince, state, potentate, or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province, or against the ships, goods, or merchandise of any foreign prince, state, potentate, or persons as aforesaid, or their subjects, may be prejudicial to and tend to endanger the peace and welfare of this kingdom; and whereas the laws in force are not sufficiently effectual for preventing the same:

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the lords, spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this act, an act passed in the ninth year of the reign of his late Majesty King George the Second, entitled "An act to prevent the listing His Majesty's subjects to serve as soldiers without His Majesty's license;" and also an act passed in the twenty-ninth year of the reign of his said late Majesty King George the Second, entitled "An act to prevent His Majesty's subjects from serving as officers under the French King, and for better enforcing an act passed in the ninth year of his present Majesty's reign to prevent the enlisting His Majesty's subjects to serve as soldiers without His Majesty's license; and for obliging such of His Majesty's subjects as shall accept commissions in the Scotch brigade in the service of the States-General of the United Provinces, to take the oaths of allegiance and abjuration;" and also an act passed in Ireland in the eleventh year of the reign of his said late Majesty King George the Second, entitled "An act for the more effectual preventing the enlisting of His Majesty's subjects to serve as soldiers in foreign service without His Majesty's license;" and also an act passed in Ireland in the nineteenth year of the reign of his said late Majesty King George the Second, entitled "An act for the more effectual preventing His Majesty's subjects from entering into foreign service, and for publishing an act of the seventh year of King William the Third, entitled 'An act to prevent foreign education,'" and all and every the clauses and provisions in the said several acts contained, shall be, and the same are hereby, repealed.

II. *And be it further declared and enacted*, That if any natural-born subject of His Majesty, his heirs and successors, without the leave or license of His Majesty, his heirs or successors, for that purpose first had and obtained under the sign-manual of His Majesty, his heirs or successors, or signified by order in council, or by proclamation of His Majesty, his heirs or successors, shall take or accept, or shall agree to take or accept, any military commission, or shall otherwise enter into the military service as a commissioned or non-commissioned officer, or shall enlist or enter himself to enlist, or shall agree to enlist or to enter himself to serve as a soldier, or to be employed or shall serve in any warlike or military operation in the service of or for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or soldier, or in any other military capacity; or if any natural-born subject of His Majesty shall, without such leave or license as aforesaid, accept, or agree to take or accept, any commission, warrant, or appointment as an officer, or shall enlist or enter himself, or shall agree to enlist or enter himself to serve as a sailor or marine, or to be employed or engaged, or shall serve in and on board any ship or ves-

sel of war, or in and on board of any ship or vessel used or fitted out, or equipped, or intended to be used for any warlike purpose, in the service of or for or under or in aid of any foreign power, prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people; or if any natural-born subject of His Majesty shall, without such leave and license as aforesaid, engage, contract, or agree to go, or shall go to any foreign state, country, colony, province, or part of any province, or to any place beyond the seas, with an intent or in order to enlist or enter himself to serve, or with intent to serve in any warlike or military operation whatever, whether by land or by sea, in the service of or for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or in the service of or for or under or in aid of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or a soldier, or in any other military capacity, or as an officer or sailor, or marine, in any such ship or vessel as aforesaid, although no enlisting money or pay or reward shall have been or shall be in any or either of the cases aforesaid actually paid to or received by him, or by any person to or for his use or benefit; or if any person whatever, within the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions elsewhere, or in any country, colony, settlement, island, or place belonging to or subject to His Majesty, shall hire, retain, engage, or procure, or shall attempt or endeavor to hire, retain, engage, or procure, any person or persons whatever to enlist, or to enter or engage to enlist, or to serve or to be employed in any such service or employment as aforesaid, as an officer, soldier, sailor, or marine, either in land or sea service, for or under and in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or for or under or in aid of any person or persons exercising or assuming to exercise any powers of government as aforesaid, or to go or to agree to go or embark from any part of His Majesty's dominions, for the purpose or with intent to be so enlisted, entered, engaged, or employed as aforesaid, whether any enlisting money, pay, or reward shall have been or shall be actually given or received, or not; in any or either of such cases, every person so offending shall be deemed guilty of a misdemeanor, and upon being convicted thereof, upon any information or indictment, shall be punishable by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted.

III. *Provided always, and be it enacted,* That nothing in this act contained shall
[14] extend or be construed to extend to render any person or persons * liable to any punishment or penalty under this act, who at any time before the first day of August, one thousand eight hundred and nineteen, within any part of the United Kingdom, or of the islands of Jersey, Guernsey, Alderney, or Sark, or at any time before the first day of November, one thousand eight hundred and nineteen, in any part or place out of the United Kingdom, or of the said islands, shall have taken or accepted, or agreed to take or accept any military commission, or shall have otherwise enlisted into any military service as a commissioned or non-commissioned officer, or shall have enlisted, or entered himself to enlist, or shall have agreed to enlist or to enter himself to serve as a soldier, or shall have served, or having so served, shall, after the said first day of August, one thousand eight hundred and nineteen, continue to serve in any warlike or military operation either as an officer or soldier, or in any other military capacity, or shall have accepted, or agreed to take or accept any commission, warrant, or appointment as an officer, or shall have enlisted or entered himself to serve, or shall have served, or having so served shall continue to serve as a sailor or marine, or shall have been employed or engaged, or shall have served, or having so served shall, after the said first day of August, continue to serve in and on board of any ship or vessel of war, used or fitted out, or equipped or intended for any warlike purpose; or shall have engaged, or contracted or agreed to go, or shall have gone to, or having so gone to shall, after the said first day of August, continue in any foreign state, country, colony, province, or part of a province, or to or in any place beyond the seas, unless such person or persons shall embark at or proceed from some port or place within the United Kingdom, or the islands of Jersey, Guernsey, Alderney, or Sark, with intent to serve as an officer, soldier, sailor, or marine, contrary to the provisions of this act, after the said first day of August, or shall embark or proceed from some port or place out of the United Kingdom, or the islands of Jersey, Guernsey, Alderney, or Sark, with such intent as aforesaid, after the said first day of November, or who shall, before the passing of this act, and within the said United Kingdom, or the said islands, on or before the first day of November, one thousand eight hundred and nineteen, in any port or place out of the said United Kingdom, or the said islands, have hired, retained, engaged, or procured, or attempted, or endeavored to hire, retain, engage, or procure, any person or persons whatever to enlist or to enter, or to engage to enlist or to serve, or be employed in any such service or employment as aforesaid as an officer, soldier, sailor, or marine, either in land or sea service, or to go, or agree to go or embark for

the purpose or with the intent to be so enlisted, entered, or engaged, or employed contrary to the prohibitions respectively in this act contained, anything in this act contained to the contrary in anywise notwithstanding; but that all and every such persons and person shall be in such state and condition, and no other, and shall be liable to such fines, penalties, forfeitures, and disabilities, and none other, as such person or persons was or were liable and subject to before the passing of this act, and as such person or persons would have been in, and been liable and subject to, in case this act and the said recited acts by this act repealed had not been passed or made.

IV. *And be it further enacted*, That it shall and may be lawful for any justice of the peace residing at or near to any port or place within the United Kingdom of Great Britain and Ireland, where any offense made punishable by this act as a misdemeanor shall be committed, on information on oath of any such offense, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such justice, or any justice of the peace; and it shall be lawful for the justice of the peace before whom such offender shall be brought, to examine into the nature of the offense upon oath, and to commit such person to gaol, there to remain until delivered by due course of law, unless such offender shall give bail, to the satisfaction of the said justice, to appear and answer to any information or indictment to be preferred against him, according to law, for the said offense; and that all such offenses which shall be committed within that part of the United Kingdom called England, shall and may be proceeded and tried in His Majesty's court of King's Bench at Westminster, and the venue in such case laid at Westminster, or at the assizes or session of oyer and terminer and gaol delivery, or at any quarter or general sessions of the peace in and for the county or place where such offense was committed; and that all such offenses which shall be committed within that part of the United Kingdom called Ireland, shall and may be prosecuted in His Majesty's court of King's Bench at Dublin, and the venue be id at Dublin, or at any assizes or session of oyer and terminer and gaol delivery, or at any quarter or general sessions of the peace in and for the county or place where such offense was committed; and all such offenses as shall be committed in Scotland shall and may be prosecuted in the court of justiciary in Scotland, or any other court competent to try criminal offenses committed within the county, shire, or stewartry within which such offense was committed; and where any offense made punishable by this act as a misdemeanor shall be committed out of the said United Kingdom, it shall be lawful for any justice of the peace residing near to the port or place where such offense shall be committed, on information on oath of any such offense, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such justice, or any other justice of the peace for such place; and it shall be lawful for the justice of the peace before whom such offender shall be brought, to examine into the nature of the offense upon oath, and to commit such person to gaol, there to remain till delivered by due course of law, or otherwise to hold such offender to bail to answer for such offense in the superior court, competent to try and having jurisdiction to try criminal offenses committed in such port or place; and all such offenses committed at any place out of the said United Kingdom shall and may be prosecuted and tried in any superior court of His Majesty's dominions competent to try and having jurisdiction to try criminal offenses committed at the place where such offense shall be committed.

V. *And be it further enacted*, That in case any ship or vessel, in any port or place within His Majesty's dominions, shall have on board any such person or persons who shall have been enlisted or entered to serve, or shall have engaged, or agreed, or been procured to enlist, or enter, or serve, or who shall be departing from His Majesty's dominions for the purpose and with the intent of enlisting or entering to serve, or to be employed, or of serving or being engaged or employed in the service of any foreign prince, state, or potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign colony, province, or part of any province or people, either as an officer, soldier, sailor, or marine, contrary to the provisions of this act, it shall be lawful for any of the principal officers of His Majesty's customs where any such officer of the customs shall be, and in any part of His Majesty's dominions in which there are no officers of His Majesty's customs, for any governor, or persons having the chief civil command, upon information on oath given before them respectively, which oath they are hereby respectively authorized and empowered to administer, that such person or persons as aforesaid is or are on board such ship or vessel, to detain and prevent any such ship or vessel, or to cause such ship or vessel to be detained and prevented from proceeding to sea or her voyage with such persons as aforesaid on board: *Provided nevertheless*, That no principal officer, governor, or person shall act as aforesaid upon such information upon oath as aforesaid unless the party so informing shall not
[15] only have deposed in such information that the person or persons on board *such ship or vessel hath or have been enlisted or entered to serve, or hath or have engaged, or agreed, or been procured to enlist, or enter, or serve, or is or are departing as aforesaid for the purpose and with the intent of enlisting, or entering to serve, or to be

employed, or of serving, or being engaged or employed in such service as aforesaid, but shall also have set forth in such information, upon oath, the facts or circumstances upon which he forms his knowledge or belief, enabling him to give such information upon oath; and that all and every person and persons convicted of willfully false swearing in any such information upon oath, shall be deemed guilty of and suffer the penalties on persons convicted of willful and corrupt perjury.

VI. *And be it further enacted*, That if any master, or other person having or taking the charge or command of any ship or vessel, in any part of the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions beyond the seas, shall knowingly and willingly take on board, or if such master or other person having the command of any such ship or vessel, or any owner or owners of any such ship or vessel, shall knowingly engage to take on board any person or persons who shall have been enlisted or entered to serve, or shall have engaged, or agreed, or been procured to enlist, or enter, or serve, or who shall be departing from His Majesty's dominions for the purpose and with the intent of enlisting or entering to serve, or to be employed, or of serving, or being engaged or employed in any naval or military service, contrary to the provisions of this act, such master, or owner, or other person as aforesaid shall forfeit and pay the sum of fifty pounds for each and every such person so taken or engaged to be taken on board; and, moreover, every such ship or vessel so having on board, conveying, carrying, or transporting any such person or persons, shall and may be seized and detained by the collector, comptroller, surveyor, or other officer of the customs, until such penalty or penalties shall be satisfied and paid, or until such master or person, or the owner or owners of such ship or vessel, shall give good and sufficient bail, by recognizance before one of His Majesty's justices of the peace, for the payment of such penalty or penalties.

VII. *And be it further enacted*, That if any person, within any part of the United Kingdom, or in any part of His Majesty's dominions beyond the seas, shall, without the leave and license of His Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavor to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, state, or potentate, or of any foreign colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province or people, as a transport or store-ship, or with intent to cruise or commit hostilities against any prince, state, or potentate, or against the subjects or citizens of any prince, state, or potentate, or against the persons exercising or assuming to exercise the powers of government in any colony, province, or part of any province or country, or against the inhabitants of any foreign colony, province, or part of any province or country, with whom His Majesty shall not then be at war; or shall, within the United Kingdom, or any of His Majesty's dominions, or in any settlement, colony, territory, island, or place belonging or subject to His Majesty, issue or deliver any commission for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid, every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the court in which such offender shall be convicted; and every such ship or vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition and stores which may belong to or be on board of any such ship or vessel, shall be forfeited; and it shall be lawful for any officer of His Majesty's customs or excise, or any officer of His Majesty's navy, who is by law empowered to make seizures for any forfeiture incurred under any of the laws of customs or excise, or the laws of trade and navigation, to seize such ships and vessels as aforesaid, and in such places and in such manner in which the officers of His Majesty's customs or excise and the officers of His Majesty's navy are empowered respectively to make seizures under the laws of customs and excise, or under the laws of trade and navigation; and that every such ship and vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of such ship or vessel, may be prosecuted and condemned in the like manner and in such courts as ships or vessels may be prosecuted and condemned, for any breach of the laws made for the protection of the revenues of customs and excise, or of the laws of trade and navigation.

VIII. *And be it further enacted*, That if any person in any part of the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions beyond the seas, without the leave and license of His Majesty for that purpose first had and obtained as aforesaid, shall, by adding to the number of the guns of such vessel, or by changing those on board for other guns, or by the addition of any equipment for war, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting the warlike force of any ship or vessel of war,

or cruiser, or other armed vessel which at the time of her arrival in any part of the United Kingdom or any of His Majesty's dominions, was a ship of war, cruiser, or armed vessel in the service of any foreign prince, state, or potentate, or of any person or persons exercising or assuming to exercise any powers of government in or over any colony, province, or part of any province or people belonging to the subjects of any such prince, state, or potentate, or to the inhabitants of any colony, province, or part of any province or country under the control of any person or persons so exercising or assuming to exercise the powers of government, every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon being convicted thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted.

IX. *And be it further enacted*, That offenses made punishable by the provisions of this act, committed out of the United Kingdom, may be prosecuted and tried in His Majesty's court of King's Bench at Westminster, and the venue in such case laid at Westminister, in the county of Middlesex.

X. *And be it further enacted*, That any penalty or forfeiture inflicted by this act may be prosecuted, sued for, and recovered, by action of debt, bill, plaint, or information, in any of His Majesty's courts of record at Westminister or Dublin, or in the court of exchequer, or in the court of session in Scotland, in the name of His Majesty's attorney-general for England or Ireland, or His Majesty's advocate for Scotland respectively, or in the name of any person or persons whatsoever: wherein no essoign, protection, privilege, wager of law, nor more than one imparlance shall be allowed; and in every action or suit the person against whom judgment shall be given for any penalty or forfeiture under this act shall pay double costs of suit; and every such action or suit shall and may be brought at any time within twelve months after the offense committed, and not afterwards; and one moiety of every penalty to be recovered by virtue of this act shall go and be applied to His Majesty, his heirs or successors,
[16] and the other moiety to the use of such person or persons as shall first sue for the same, after deducting the charges of prosecution from the whole.

XI. *And be it further enacted*, That if any action or suit shall be commenced, either in Great Britain or elsewhere, against any person or persons for anything done in pursuance of this act, all rules and regulations, privileges and protections, as to maintaining or defending any suit or action, and pleading therein, or any costs thereon, in relation to any acts, matters, or things done, or that may be done by any officer of customs or excise, or by any officer of His Majesty's navy, under any act of Parliament in force on or immediately before the passing of this act, for the protection of the revenues of customs and excise, or prevention of smuggling, shall apply and be in full force in any such action or suit as shall be brought for anything done in pursuance of this act, in as full and ample a manner to all intents and purposes as if the same privileges and protections were repeated and re-enacted in this act.

XII. *Provided always, and be it further enacted*, That nothing in this act contained shall extend, or be construed to extend, to subject to any penalty any person who shall enter into the military service of any prince, state, or potentate in Asia, with leave or license, signified in the usual manner, from the governor-general in council, or vice-president in council, of Fort William in Bengal, or in conformity with any orders or regulations issued or sanctioned by such governor-general or vice-president in council.

Appendix No. II.

UNITED STATES FOREIGN-ENLISTMENT ACT.

(Fifteenth Congress, sess. 1, ch. 8, April 20, 1818.)

Chap. LXXXVIII.—An Act in addition to the "Act for the punishment of certain crimes against the United States," and to repeal the acts therein mentioned.[1]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if any citizen of the United States shall, within the territory or jurisdiction thereof, accept and exercise a commission to serve a foreign prince, state, colony, district, or people, in war, by land or by sea, against any prince, state, colony, district, or people with whom the United States are at peace, the person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than two thousand dollars, and shall be imprisoned not exceeding three years.

Sec. 2. *And be it further enacted*, That if any person shall, within the territory or

[1] "An act for the punishment of certain crimes against the United States," April 30, 1790, ch. 9. Act of March 3, 1817, ch. 58.

jurisdiction of the United States, enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding three years: *Provided*, That this act shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district, or people, who shall transiently be within the United States, and shall on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States, was fitted and equipped as such, enter and enlist himself, or hire or retain another subject or citizen of the same foreign prince, state, colony, district, or people, who is transiently within the United States, to enlist or enter himself to serve such foreign prince, state, colony, district, or people, on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people.

SEC. 3. *And be it further enacted*, That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming, of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince, or state, or of any colony, district, or people with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be employed as aforesaid, every person so offending shall be guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States.

SEC. 4. *And be it further enacted*, That if any citizen or citizens of the United States shall, without the limits thereof, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly aid or be concerned in the furnishing, fitting out, or arming, any private ship or vessel of war, or privateer, with intent that such ship or vessel shall be employed to cruise, or commit hostilities, upon the citizens of the United States, or their property, or shall take the command of, or enter on board of any such ship or vessel, for the intent aforesaid, or shall purchase any interest in any such ship or vessel, with a view to share in the profits thereof, such persons so offending shall be deemed guilty of a high misdemeanor, and fined not more than ten thousand dollars, and imprisoned not more than ten years; and the trial for such offense, if committed within the limits of the United States, shall be in the district in which the offender shall be apprehended or first brought.

SEC. 5. *And be it further enacted*, That if any persons shall, within the territory or jurisdiction of the United States, increase or augment, or procure to be increased or augmented, or shall knowingly be concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel, which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by the addition thereto of any equipment solely applicable to war, every person so offending shall be deemed guilty of a high misdemeanor, shall be fined not more than one thousand dollars, and be imprisoned not more than one year.

SEC. 6. *And be it further enacted*, That if any person shall, within the territory or jurisdiction of the United States, begin or set on foot, or provide or prepare the means for any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district, or
[17] people, with whom the United States are at peace, every person so offending *shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars, and be imprisoned not more than one year.

SEC. 7. *And be it further enacted*, That the district courts shall take cognizance of complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof.

SEC. 8. *And be it further enacted*, That in every case in which a vessel shall be fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser, or other armed vessel, shall be increased or augmented, or in which any military expedition or enterprise shall be begun or set on foot, con-

trary to the provisions and prohibitions of this act; and in every case of the capture of a ship or vessel within the jurisdiction or protection of the United States as before defined, and in every case in which any process issuing out of any court of the United States shall be disobeyed or resisted by any person or persons having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, in every case it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such ship or vessel, with her prize or prizes, if any, in order to the execution of the prohibitions and penalties of this act, and to the restoring the prize or prizes in the cases in which restoration shall have been adjudged, and also for the purpose of preventing the carrying on any such expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace.

SEC. 9. *And be it further enacted*, That it shall be lawful for the President of the United States, or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign ship or vessel to depart the United States in all cases in which by the law of nations or the treaties of the United States they ought not to remain within the United States.

SEC. 10. *And be it further enacted*, That the owners or consignees of every armed ship or vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace.

SEC. 11. *And be it further enacted*, That the collectors of the customs be, and they are hereby, respectively authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart the United States, of when the cargo shall principally consist of arms and munitions of war, when the number of men shipped or board, or other circumstances, shall render it probable that such vessel is intended to be employed by the owner or owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign state, or of any colony, district, or people with whom the United States are at peace, until the decision of the President be had thereon, or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding section of this act.

SEC. 12. *And be it further enacted*, That the act passed on the fifth day of June, one thousand seven hundred and ninety-four, entitled "An act in addition to the act for the punishment of certain crimes against the United States," continued in force, for a limited time, by the act of the second of March, one thousand seven hundred and ninety-seven, and perpetuated by the act passed on the twenty-fourth of April, one thousand eight hundred, and the act passed on the fourteenth day of June, one thousand seven hundred and ninety-seven, entitled "An act to prevent citizens of the United States from privateering against nations in amity with, or against the citizens of, the United States," and the act passed the third day of March, one thousand eight hundred and seventeen, entitled "An act more effectually to preserve the neutral relations of the United States," be, and the same are hereby, severally repealed: *Provided, nevertheless*, That persons having heretofore offended against any of the acts aforesaid may be prosecuted, convicted, and punished as if the same were not repealed; and no forfeiture heretofore incurred by a violation of any of the acts aforesaid shall be affected by such repeal.

SEC. 13. *And be it further enacted*, That nothing in the foregoing act shall be construed to prevent the prosecution or punishment of treason, or any piracy defined by the laws of the United States.

APPENDIX No. III.

MEMORANDUM BY MR. ABBOTT.

THE FOREIGN-ENLISTMENT ACT.

(59 Geo. III, c. 69, July 3, 1819.)

The foreign-enlistment acts of Great Britain and the United States, the circumstances under which they were passed, as well as the principles of neutrality involved in them,

are so similar that a consideration of the British must necessarily be prefaced by an account of the history of the American act.[1]

THE UNITED STATES FOREIGN-ENLISTMENT ACT.

When, after the execution of Louis the XVIth, the French National Convention declared war, on the 1st of February, 1793, against England and Holland, one of their first acts was to appoint a representative to proceed to the United States to solicit the support of the sister republic, and to reclaim the privileges to which they considered France to be entitled under the two treaties of the 6th of February, 1778.[2]

The first of those treaties was a treaty of friendship and commerce, and contained the following articles:

"ARTICLE XVII. Les vaisseaux de guerre de sa majesté très-chrétienne et ceux des États-Unis, de même que ceux que leurs sujets auront armés en guerre, pourront, en toute liberté, conduire où bon leur semblera les prises qu'ils auront faites sur les ennemis, sans être obligés à aucuns droits, soit des srs. amiraux ou de l'amirauté ou d'aucuns autres, sans qu'aussi les dits vaisseaux, ou les dites prises, entrant dans les havres ou ports de sa majesté très-chrétienne, ou des États-Unis puissent être arrêtés ou saisis, ni que les officiers des lieux puissent prendre connaissance de la validité des dites prises, lesquelles pourront sortir et être conduites franchement et en toute liberté aux lieux portés par les commissions dont les capitaines des dits vaisseaux seront obligés de faire apparoir; et au contraire ne sera donné asyle ni retraite dans leurs ports ou havres à ceux qui auront fait des prises sur les sujets de sa majesté ou des États-Unis, et s'ils sont forcés d'y entrer par tempête ou péril de la mer, on les fera sortir le plutôt qu'il sera possible." Martens: Recueil des Traités, tom. 1, p. 445.

"ARTICLE XXII. Il ne sera permis à aucun corsaire étranger, non appartenant à quelque sujet de sa majesté très-chrétienne, ou à un citoyen des dits États-Unis, [18] lequel aura une commission de la part *d'un prince, ou d'une puissance en guerre avec l'une des deux nations, d'armer leurs vaisseaux dans les ports d'une des deux parties, ni d'y vendre les prises qu'il aura faites, ni de décharger en autre manière quelconque les vaisseaux, marchandises, ou aucune partie de leur cargaison. Il ne sera même pas permis d'acheter d'autres vivres que ceux qui lui seront nécessaires pour se rendre dans le port le plus voisin du prince ou de l'état dont il tient commission."

The other treaty, styled "Traité d'alliance evantuelle et défensive," provided (Article XI) for the mutual guarantee of the French and United States possessions in North America, "le tout comme la possession sera fixée et assurée aux dits états, au moment de la cessation de la guerre qu'ils ont actuellement contre l'Angletérre;" and Article XII: "À l'effet de fixer plus précisement le sens et l'application de l'article précédent, les parties contractantes déclarent que, dans le cas d'une rupture entre la France et l'Angleterre, la garantie réciproque, stipulée dans le dit article, sortira son plein et entier effet, dès le moment qu'une telle guerre viendra à éclater. Et si une telle rupture n'a pas lieu, les obligations mutuelles des dites guaranties ne commenceront pas avant le moment que la cessation de la présente guerre entre les États-Unis et l'Angleterre aura fixé ces possessions d'une manière certaine."

The national convention assumed that under these stipulations they might claim the exclusive right to arm and commission privateers within American ports, to bring into them their prizes, to cause the prizes thus brought in to be condemned by French consuls and sold, and even to capture enemy's vessels within the limits of the maritime jurisdiction of the United States. At least such were the pretensions of their envoy, Monsieur, or, as he styles himself, Citizen, Genet, a Girondist of the most exaggerated type, whose avowed object was to excite the people of the United States to a war with Great Britain.

On the other hand, Washington, then entering on his second term of office as President, was determined to preserve the neutrality of his country, and immediately on receiving intelligence of the outbreak of war hastened from Mount Vernon to Philadelphia, and summoned his cabinet to consider— Tucker's History of the United States, Ed. 1856, vol. i, pages 504 to 517.

1. Whether a proclamation of neutrality should be issued.
2. Whether a minister should be received from the party then in power in France.
3. Whether the United States were bound by the guarantee in the treaty of 1778.

The cabinet differed on the second and third points, but were unanimous in the favor of the issue of a proclamation.

On referring to the history of the United States for this period, it will be seen that the President was placed in a position which made it very difficult for him to carry out the policy of neutrality which he had decided upon.

The sympathies of the people of the United States were warmly engaged on behalf of France. The hostility against England generated during the war of Independence was kept alive and fostered by the excesses committed by the frontier Indians, who, it was alleged, were encouraged by the British authorities; disputes had been raised as to the interpretation of the Tucker's History of the United States. Guizot. Washington.

[1] Fifteenth Congress, sess. 1, chap. 8, April 20, 1818. [2] Signed by Benjamin Franklin

treaty of 1783: American seamen were pressed for the British navy; the English government were said to exercise the right of search at sea, and to interfere with American merchant-vessels in an arbitrary and unfriendly manner. Besides the difficulties arising from these and other similar complaints against the British government, which rendered any measure which might be supposed to be favorable to England in the highest degree unpopular, the cabinet of the President was divided into factions headed respectively by Thomas Jefferson, Secretary for Foreign Affairs, and Alexander Hamilton, Secretary of the Treasury. The former, who had served from 1782 to 1789 as minister at Paris, was at the head of the party who advocated the rights of separate government in the several states. He was a republican of extreme views, and favored the French cause. The latter, the leader of the Federal or centralization party, was inclined toward the constitutional system of England, with which country he consequently in some degree sympathized.

It is necessary to take some notice of these obstacles to the President's policy of neutrality, as explaining the subsequent proceedings of the United States Government. The nation at large and two of the cabinet, Jefferson and the Attorney-General, Edmund Randolph, were for affording assistance to France in the first instance, and even for engaging eventually in the war. Washington, with Hamilton and Henry Knox, the Secretary for War, advocated a strict neutrality, and were supported in their views by the Federalist party. Washington's strength of character overcame the opposition of the French party, and he succeeded in commencing and maintaining that policy of non-intervention in European affairs which has since been consistently followed by his country up to the present time.

American State Papers, Vol. i, page 140.

The proclamation of neutrality was issued on the 22d of April, 1793, and was as follows:

Whereas it appears that a state of war exists between Austria, Prussia, Sardinia, Great Britain, and the United Netherlands, on the one part, and France on the other part; and the duty and interest of the United States require that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial towards the belligerent powers:

I have therefore thought fit by these presents to declare the disposition of the United States to observe the conduct aforesaid toward those powers respectively, and to exhort and warn the citizens of the United States carefully to avoid all acts and proceedings whatsoever which may in any manner tend to contravene such disposition.

And I do hereby also make known, that whosoever of the citizens of the United States shall render himself liable to punishment or forfeiture under the law of nations, by committing, aiding, or abetting hostilities against any of the said powers, or by carrying to any of them those articles which are deemed contraband by the modern usage of nations, will not receive the protection of the United States against such punishment or forfeiture; and further, that I have given instructions to those officers to whom it belongs to cause prosecutions to be instituted against all persons who shall, within the cognizance of the courts of the United States, violate the law of nations with respect to the powers at war, or any of them.

(Signed) WASHINGTON.

Philadelphia, April 22, 1793.

By the President:

(Signed) TH. JEFFERSON.

In the meanwhile, M. Genet had sailed from France provided with blank commissions or letters of marque for distribution in the ports of the United States. He arrived at Charleston on the 8th of April; but the intelligence of his landing was not received by the United States Government at Philadelphia until the day on which the proclamation was issued. He at once organized a system of privateering, and within a week commissioned four vessels, the Republican, the Sans Culotte, the Anti-George, and the Citizen Genet. He also authorized the French consuls in the United States to hold courts of vice-admiralty on any vessels their cruisers might capture, to condemn them and sell the prizes. Instead of proceeding by sea to Philadelphia, M. Genet made a triumphant progress by land, haranguing the people, instituting "bonnet-rouge" clubs, and endeavoring to excite the citizens of the towns through which he passed to afford active aid to the French republic, in spite of the President's declaration of neutrality.

Mr. Jefferson to Mr. Morris, United States minister at Paris, August 16, 1793.

American State Papers, Vol. i, page 167.

Tucker, vol. i, page 509

Mr. Hammond lost no time in remonstrating against these proceedings, and on the 8th of May addressed the following note to Mr. Jefferson:

[19] "The undersigned, Her Britannic Majesty's minister plenipotentiary to the United States of America, has the honor of informing the Secretary of State that he has received intelligence from His Majesty's consul at Charleston, South Carolina, that two privateers have been fitted out from that port under French commissions. They carry six small guns, and are navigated by forty or fifty men, who are for the most part citizens of the United States.

MS. Inclosure in Mr. Hammond's dispatch to Lord Grenville, May 17, 1793.

One of these privateers left the harbor of Charleston on the 18th ultimo, and the other was on the 22d ultimo ready to depart.

"The undersigned does not deem it necessary to enter into any reasoning upon these facts, as he conceives them to be breaches of that neutrality which the United States profess to observe, and direct contraventions of the proclamation which the President issued upon the 22d of last month. Under this impression he doubts not that the Executive Government of the United States will pursue such measures as to its wisdom may appear the best calculated for repressing such practices in future and for restoring to their rightful owners any captures which these particular privateers may attempt to bring into any of the ports of the United States."

Mr. Hammond at the same time forwarded to Mr. Jefferson three other notes complaining respectively of the illegal prize-court established by the French consul at Charleston, of the intended shipment of arms and munitions of war for France from American ports, and of the seizure of the British bark Grange by the French frigate Abondance in the Delaware River.

Mr. Jefferson to Mr. Hammond, May 15, 1865.

In acknowledging the receipt of these communications, Mr. Jefferson observed, with reference to the export of arms, that "American citizens have always been free to make, vend, and export arms; it is the constant occupation and livelihood of some of them; to suppress their callings, the only means perhaps of their subsistence, because a war exists in foreign and distant countries in which we have no concern, would scarcely be expected; it would be hard in principle and impossible in practice; the law of nations, therefore, respecting the rights of those at peace, does not require from them such an internal derangement of their occupations; it is satisfied with the external penalty pronounced in the President's proclamation, that of confiscation of such portion of those arms as shall fall into the hands of any of the belligerent powers on the way to the ports of their enemies; to this penalty American citizens are warned that they will be abandoned, and that even private contraventions may work no inequality between the parties at war, the benefit of them will be left equally free and open to all."

Jefferson's Works, vol. iii, p. 557.

"Mr. Jefferson also declared that the United States Government 'condemned in the highest degree the conduct of any of its citizens who might personally engage in committing hostilities at sea against any of the nations who were parties to the war, and that it would exert all the means *with which the laws and Constitution armed them* to discover such as offended therein, and would bring them to condign punishment,' and that 'the practice of commissioning, equipping, and manning vessels in American ports to cruise on any of the belligerent parties was equally and entirely disapproved, and that the Government would take effectual measures to prevent a repetition of it.'" He likewise promised that the Government would take measures for the liberation of the crew of the Grange and restitution of the vessel and cargo, and concurred with Mr. Hammond that the establishment of a French prize-court at Charleston was "not warranted by the usage of nations nor by the stipulations existing between the United States and France."

Mr. Hammond's note requesting the restoration of the prizes was reserved for further consideration.

M. Genet reached Philadelphia on the 16th of May, 1793. The previous day a note had been addressed to his predecessor, M. Ternant, by Mr. Jefferson, recounting the claims of violations of neutrality preferred by the British minister, Mr. George Hammond, and calling his attention to the seizure of the English bark Grange by the French frigate Abondance in the Delaware River. Attached to this note is a report of Attorney-General Randolph on the general question of maritime jurisdiction. M. Genet restored the vessel. The correspondence continued until the 5th of June, when the final decision of the United States Government was conveyed to M. Genet and Mr. Hammond in the following official notes.

American State Papers, vol. i, p. 147.

"Mr. Jefferson to M. Genet.

"PHILADELPHIA, *June* 5, 1793.

"SIR: In my letter of May 15th to Mr. Ternant, your predecessor, after stating the answer which had been given to the several memorials of the British minister of May the 8th, it was observed that a part still remained unanswered of that which respected the fitting out of armed vessels in Charleston, to cruise against nations with whom we were at peace.

Jefferson's Works, vol. iii, page 571.

"In a conversation which I had afterwards the honor of holding with you, I observed that one of these armed vessels, the Citizen Genet, had come into this port with a prize; that the President had thereupon taken the case into further consideration, and after mature consultation and deliberation, was of opinion that the arming and equipping vessels in the ports of the United States to cruise against nations with whom they are at peace was incompatible with the territorial sovereignty of the United States, that it made them instrumental to the annoyance of those nations, and thereby tended to compromise their peace; and that he thought it necessary as an evidence of

good faith to them, as well as a proper reparation to the sovereignty of the country, that the armed vessels of this description should depart from the ports of the United States.

"The letter of the 27th ultimo, with which you have honored me, has been laid before the President, and that part of it which contains your observations on this subject has been particularly attended to. The respect due to whatever comes from your friendship for the French nation and justice to all have induced him to re-examine the subject, and particularly to give your representations thereon the consideration they deservedly claim. After fully weighing again, however, all the principles and circumstances of the case, the result appears still to be, that it is the right of every nation to prohibit acts of sovereignty from being exercised by any other within its limits, and the duty of a neutral to prohibit such as would injure one of the warring powers; that the granting military commissions within the United States by any other authority than their own is an infringement on their sovereignty, and particularly so when granted to their own citizens to lead them to act contrary to the duties they owe to their own country; that the departure of vessels thus illegally equipped from the ports of the United States will be but an acknowledgement of respect analogous to the breach of it, while it is necessary on their part as an evidence of their faithful neutrality. On these considerations, sir, the President thinks that the United States owe it to themselves and to the nations in their friendship to expect this out of reparation on the part of vessels marked in their very equipment with offense to the laws of the land, of which the law of nations makes an integral part.

"The expressions of friendly sentiment which we have already had the satisfaction of receiving from you, leave no room to doubt that the conclusion of the President being thus made known to you, these vessels will be permitted to give no further umbrage by their presence in the ports of the United States.

"I have, &c.,

"T. JEFFERSON."

"*Mr. Jefferson to Mr. Hammond.*

"PHILADELPHIA, *June* 5, 1793.

"SIR: In the letter which I had the honor of writing you on the 15th of May, in answer to your several memorials of the 8th of that month, I mentioned "that the President reserved for further consideration a part of the one which related to the
[20] equipment of two privateers in the port of Charleston. The part alluded to was that wherein you express your confidence that the Executive Government of the United States would pursue measures for repressing such practices in future, and for restoring to their rightful owners any captures which such privateers might bring into the ports of the United States.

"The President, after a full investigation of this subject and the most mature consideration, has charged me to communicate to you that the first part of this application is found to be just, and that effectual measures are taken for preventing repetitions of the act therein complained of; but that the latter part, desiring restitution of the prizes, is understood to be inconsistent with the rules which govern such cases, and would, therefore, be unjustifiable toward the other party.

"The principal agents in this transaction were French citizens. Being within the United States at the moment a war broke out between their own and another country, they determined to go into its defense: they purchase, arm, and equip a vessel with their own money, man it themselves, receive a regular commission from their nation, depart out of the United States, and then commence hostilities by capturing a vessel. If under these circumstances the commission of the captors was valid, the property according to the laws of war was by the capture transferred to them, and it would be an aggression on their nation for the United States to rescue it from them, whether on the high seas or on coming into their ports. If the commission was not valid, and consequently the property not transferred by the laws of war to the captors, then the case would have been cognizable in our courts of admiralty, and the owners might have gone thither for redress. So that on neither supposition would the Executive be justifiable in interposing.

"With respect to the United States, the transaction can in nowise be imputed to them. It was in the first moment of the war, in one of their most distant ports, before measures could be provided by the Government to meet all the cases which such a state of things was to produce, impossible to have been known, and therefore impossible to have been prevented by that Government.

"The moment it was known the most energetic orders were sent to every State and port in the Union to prevent a repetition of the accident. On a suggestion that citizens of the United States had taken part in the act, one who was designated was instantly committed to prison for prosecution, one or two others have been since named and committed in like manner; and should it appear that there were still others, no measures

will be spared to bring them to justice. The President has even gone further. He has required, as a reparation of their breach of respect to the United States, that the vessels so armed and equipped shall depart from our ports.

"You will see, sir, in these proceedings of the President unequivocal proofs of the line of strict right which he means to pursue. The measures now mentioned are taken in justice to the one party, the ulterior measure of seizing and restoring the prizes is declined in justice to the other, and the evil thus early arrested will be of very limited effect; perhaps, indeed, soon disappear altogether.

"I have, &c.,
(Signed) "TH. JEFFERSON."

Shortly afterward a case occurred in which M. Genet openly defied the authority of the Government. An English letter of marque, the Little Sarah, had been captured by a French frigate and sent into Philadelphia, where she was fitted out as a privateer under the name of the Little Democrat. M. Genet was applied to to stop this vessel from sailing, but he refused to interfere, and said that force would be repelled by force. A detachment of 120 militia were sent to guard the vessel, but on M. Genet entering into an implied engagement that the vessel should not leave the river, they were withdrawn. The President then determined to submit to the judges a series of questions upon the points at issue between the Government and M. Genet, and requested the latter to detain the Little Democrat, the ships Jane and William in the Delaware, the Citoyen Genet, and her two prizes, the Lovely Lass and Prince William Henry, and the brig Fanny in the Chesapeake, until the opinion of the judges could be ascertained. The Little Democrat sailed four or five days after this, while the judges declined to answer the queries put by the Executive as out of the sphere of their judicial duties, which were limited to cases of legal controversy. The cabinet accordingly decided to lay down certain rules to be observed toward belligerents in the ports of the United States. These rules were carefully framed in accordance with the received doctrines of international law, slightly modified by the treaty between the United States and France, and were communicated to the collectors of customs with the following circular:

Tucker, vol. ii, page 513.

American State Papers, vol. ... page 163.

Mr. Jefferson to M. Genet, July 12, 1793.

Tucker, vol. ... page 515.

"*Instructions to the collector of customs.*

"PHILADELPHIA, *August* 4, 1793.

"SIR: It appearing that repeated contraventions of our neutrality laws have taken place in the ports of the United States, without having been discovered in time for prevention or remedy, I have it in command from the President to address to the collectors of the respective districts a particular instruction on the subject.

Mr. Hamilton to the collectors of customs, August 4, 1793. American State Papers, vol. i, page 141.

"It is expected that the officers of customs in each district will, in the course of their official functions, have a vigilant eye upon whatever may be passing within the ports, harbors, creeks, inlets, and waters of such district, of a nature to contravene the laws of neutrality, and upon discovery of anything of the kind, will give immediate notice to the governor of the State, and to the attorney of the judicial district comprehending the district of the customs within which any such contravention may happen.

"To assist the judgment of the officers on this head, I transmit herewith a schedule of rules concerning sundry particulars which have been adopted by the President, as deductions from the laws of neutrality, established and received among nations. Whatever shall be contrary to these rules will, of course, be to be notified as above mentioned.

"There are some points which, pursuant to our treaties and the determination of the Executive, I ought to notice to you.

"If any vessel of the powers at war with France should *bring or send* within your district a prize made of the subjects, people, or property of France, it is immediately to be notified to the governor of the State, in order that measures may be taken, pursuant to the seventeenth article of the treaty with France, to oblige such vessel and her prize, or such prize, when sent in without the capturing vessel, to depart.

"No privateer of any of the powers at war with France, coming within a district of the United States, can, by the twenty-second article of our treaty with France, enjoy any other privilege than that of *purchasing such victuals as shall be necessary for her going to the next port of the prince or state from which she has her commission.* If she should do anything besides this, it is immediately to be reported to the governor and the attorney of the district. You will observe by the rules transmitted, that the term privateer is understood not to extend to vessels armed, for merchandise and war, commonly called with us *letters of marque*, nor, of course, to vessels of war in the immediate service of the government of either of the powers at war.

"No armed vessel which has been or shall be *originally fitted out* in any port of the

United States, by either of the parties at war, is henceforth to have asylum in any district of the United States. If any such armed vessel shall appear within your district, she is immediately to be notified to the governor and to the attorney of the [21] district, which is also to be done in respect to any prize that such armed vessel shall bring or send in. At foot is a list of such armed vessels of the above description as have hitherto come to the knowledge of the Executive.

"The purchasing within and exporting from the United States, *by way of merchandise*, articles commonly called contraband, being generally warlike instruments and military stores, is free to all the parties at war, and is not to be interfered with. If our own citizens undertake to carry them to any of the parties, they will be abandoned to the penalties which the laws of war authorize.

"You will be particularly careful to observe, and to notify as directed in other instances, the case of any citizen of the United States who shall be found in the service of either of the parties at war.

"In case any vessel shall be found in the act of contravening any of the rules or principles which are the ground of this instruction, she is to be refused a clearance until she shall have complied with what the governor shall have decided in reference to her. Care, however, is to be taken in this, not unnecessarily or unreasonably to embarrass, trade, or to vex any of the parties concerned.

"In order that *contraventions* may be the better ascertained, it is desired that the officer who shall first go on board any vessel arriving within your district shall make an accurate survey of her then condition as to *military equipment*, to be forthwith reported to you; and that, prior to her clearance, a like survey be made, that any transgression of the rules laid down may be ascertained.

"But, as the propriety of any such inspection of *a vessel of war in the immediate survey of the government* of a foreign nation is not without question in reference to the usage of nations, no attempt is to be made to inspect any such vessel till further orders on the point.

"The President desires me to signify to you his most particular expectation that the instructions contained in this letter will be executed with the greatest vigilance, care, activity, and impartiality. Omissions will tend to expose the Government to serious imputations and suspicions, and proportionably to commit the good faith and peace of the country, objects of too much importance not to engage every proper exertion of your zeal.

"With consideration, I am, sir, &c.,

"ALEXANDER HAMILTON."

"1. The original arming and equipping of vessels in the ports of the United States by any of the belligerent parties for military service, offensive or defensive, is deemed unlawful.

"2. Equipments of merchant-vessels by either of the belligerent parties in the ports of the United States, purely for the accommodation of them as such, is deemed lawful.

"3. Equipments in the ports of the United States of vessels of war in the immediate service of the government of any of the belligerent parties, which, if done to other vessels, would be of a doubtful nature, as being applicable either to commerce or war, are deemed lawful; except those which shall have made prize of the subjects, people, or property of France, coming with their prizes into the ports of the United States, pursuant to the seventeenth article of our treaty of amity and commerce with France.

"4. Equipments in the ports of the United States, by any of the parties at war with France, of vessels fitted for merchandise and war, whether with or without commissions, which are doubtful in their nature, as being applicable either to commerce or war, are deemed lawful, except those which shall have made prize, &c.

"5. Equipments of any of the vessels of France, in the ports of the United States, which are doubtful in their nature as being applicable to commerce or war, are deemed lawful.

"6. Equipments of every kind, in the ports of the United States, of privateers of the powers at war with France, are deemed unlawful.

"7. Equipments of vessels in the ports of the United States, which are of a nature solely adapted to war, are deemed unlawful; except those stranded or wrecked, as mentioned in the eighteenth article of our treaty with France, the sixteenth of our treaty with the United Netherlands, the eighteenth of our treaty with Prussia.

"8. Vessels of either of the parties not armed, or armed previous to their coming into the ports of the United States, which shall not have infringed any of the foregoing rules, may lawfully engage or enlist their own subjects or citizens, not being inhabitants of the United States, except privateers of the powers at war with France, and except those vessels which have made prizes, &c."

On the 7th of August Mr. Jefferson wrote to M. Genet, stating that the President had decided that compensation or restitution should be made in the case of vessels brought into United States ports as prizes by privateers fitted out in such ports since the 5th of June, and consequently called

on him to restore these prizes, as otherwise the government of France would be considered liable for the repayment of the compensation paid to the persons aggrieved. Mr. Jefferson adds, "that besides taking efficacious measures to prevent the future fitting out of privateers in the ports of the United States, they will not give asylum therein to any which shall have been at any time so fitted out, and will cause restitution of all such prizes as shall be hereafter brought within their ports by any of the said privateers."

Mr. Hammond was also informed of this decision of the President.

Mr. Jefferson to Mr. Hammond.

"PHILADELPHIA, *August* 7, 1793.

"SIR: A constant expectation of carrying into full effect the declaration of the President against permitting the armament of vessels within the ports of the United States to cruise on nations with which they are at peace, has hitherto prevented me giving you a final answer on the subject of such vessels and their prizes. Measures to this effect are still taking, and particularly for excluding from all further asylum in our ports the vessels so armed and for the restoration of the prizes the Lively Lass, the Prince William Henry, and the Jane, of Dublin, taken by them; and I am authorized in the mean time to assure you that should the measures for restoration fail in their effect, the President considers it as incumbent upon the United States to make compensation for the vessels.

MS. inclosure in Mr. Hammond's dispatch to Lord Grenville, August 10, 1793.

"I have, &c.,

"T. JEFFERSON."

The affair of the Little Democrat, in which the Government was "thus insulted and set at defiance by M. Genet," determined them on asking for his recall; and the United States minister at Paris was accordingly instructed, on the 16th of August, to represent to the French government that if M. Genet persevered in his proceedings the United States Government would "be forced even to suspend his functions before a successor could arrive to continue them."

Mr. Jefferson to Mr. Morris, United States minister at Paris, August 16, 1793.

American State Papers, vol. , p. 167.

M. Genet seems to have tried to test the neutrality of the United States Government on every point. He maintained the right of the French government not only to issue commissions and to equip vessels, but also openly to man their privateers in American ports. Two seamen, named Henfield and Singletary, were arrested on board the Citizen Genet at Philadelphia, for having enlisted in the French service. M. Genet remonstrated in his usual bombastic style, demanding their immediate release. This was refused, and Henfield brought to trial. The jury, however, acquitted him on the plea of his having been ignorant of having committed an offense in taking service in a French privateer. M. Genet also engaged in an intrigue for the seizure of New Orleans by some malcontents in Kentucky. In short, he managed during the few months he remained the representative of France to damage the interests of his country in every conceivable way; while the temper-

M. Genet to Mr. Jefferson, June 1, 1793.

American State Papers, vol. , page 151.

Tucker, vol. i, pages 517 and 518.

[22] ate *remonstrances of the English minister afforded a contrast to these exaggerated pretensions, and served to confirm the President in his policy of neutralit and to influence the cabinet in favor of England.

Certain prizes having been brought in by vessels fitted out after the 5th of June, as well as those brought in by vessels fitted out before that date, of which restitution had already been refused, Mr. Hammond wrote on the 30th of August to Mr. Jefferson requesting to be informed of the precise intentions of the Government respecting the restoration of prizes.

MS. inclosure in Mr. Hammond's dispatch to Lord Grenville of the 17th of September, 1793.

Mr. Hammond says:

"I understand that all captures made subsequently to the 5th of June, and antecedently to the 7th of August, by any vessel fitted out, armed, and equipped in the ports of the United States, are either to be restored to the captors, or a compensation for their full value is to be paid to their owners by the Government of the United States, and that all prizes made by vessels of this description subsequently to the 7th of August are to be seized, and immediately restored by the Government of the United States, or if the restitution cannot be effected, a compensation for their full value is to be paid in the same manner as in the former case."

Mr. Jefferson replied on the 5th of September:

"PHILADELPHIA, *September* 5, 1793.

"SIR: I am honored with yours of August 30. Mine of the 7th of that month assured you that measures were taken for excluding from all further asylum in our ports vessels armed in them to cruise on nations with which we are at peace, and for the restoration of the prizes the Lovely Lass, Prince William Henry, and the Jane, of

Dublin, and that should the measures for restitution fail in their effect, the President considered it as incumbent on the United States to make compensation for the vessels.

"We are bound by our treaties with three of the belligerent nations, by all the means in our power, to protect and defend their vessels and effects in our ports or waters, or on the seas near our shores, and to recover and restore the same to the right owners when taken from them. If all the means in our power are used, and fail in their effect, we are not bound by our treaties with those nations to make compensation.

"Though we have no similar treaty with Great Britain, it was the opinion of the President that we should use toward that nation the same rule which, under this article, was to govern us with the other nations, and even to extend it to captures made on the high seas, and brought into our ports, if done by vessels which had been armed within them.

"Having, for particular reasons, forbore to use all the means in our power for the restitution of the three vessels mentioned in my letter of August 7, the President thought it incumbent on the United States to make compensation for them; and though nothing was said in that letter of other vessels taken under like circumstances, and brought in after the 5th of June, and before the date of that letter, yet, when the same forbearance had taken place, it was and is his opinion that compensation would be equally due.

"As to prizes made under the same circumstances, and brought in after the date of that letter, the President determined that all the means in our power should be used for their restitution. If these fail, as we should not be bound by our treaties to make compensation to the other powers, in the analogous case, he did not mean to give an opinion that it ought to be done to Great Britain. But still, if any cases shall arise subsequent to that date, the circumstances of which shall place them on similar ground with those before it, the President would think compensation equally incumbent on the United States.

"Instructions are given to the governors of the different States to use all the means in their power for restoring prizes of this last description found within their ports. Though they will, of course, take measures to be informed of them, and the General Government has given them the aid of the custom-house officers for this purpose, yet you will be sensible of the importance of multiplying the channels of their information as far as shall depend on yourself or any person under your direction, in order that the governors may use the means in their power for making restitution. Without knowledge of the capture, they cannot restore it. It will always be best to give the notice to them directly; but any information which you shall be pleased to send me also, at any time, shall be forwarded to them as quickly as distance will permit.

"Hence you will perceive, sir, that the President contemplates restitution or compensation in the cases before the 7th of August, and after that date, restitution, if it can be effected by any means in our power, and that it will be important that you should substantiate the fact that such prizes are in our ports or waters.

"Your list of the privateers illicitly armed in our ports is, I believe, correct.

"With respect to losses by detention, waste, spoliation, sustained by vessels taken as before mentioned, between the dates of the 5th June and the 7th August, it is proposed as a provisional measure that the collector of the customs of the district, and the British consul, or any other person you please, shall appoint persons to establish the value of the vessel and cargo, at the time of her capture, and of her arrival in the port into which she is brought, according to their value in that port.

"If this shall be agreeable to you, and you will be pleased to signify it to me, with the names of the prizes understood to be of this description, instructions will be given accordingly to the collectors of the customs where the respective vessels are.

"I have, &c.,

(Signed) "TH. JEFFERSON."

This letter was appended to the treaty of the 19th of November, 1794.

The particular reasons referred to were the unwillingness of the United States Government to oppose the sailing of the French privateers by force.

The result of the publication of the rules of the 4th August was that the system of privateering was, generally speaking, suppressed, though cases seem to have occurred until the arrival of M. Genet's successor in February, 1794, who disavowed his acts, and recalled the commissions he had granted to privateers.

It must be remembered that the United States did not possess any navy at this time, the construction of a naval force not being carried out until 1794; so that even if the Government wished to stop a privateer, they could only do so by employing militia to board her, unless she happened to be lying under the guns of a fort.

In October, M. Duplaine, the French vice-consul at Boston, having rescued by force a suspected vessel which had been seized by the marshal, the United States Government withdrew his exequatur.

Congress met on the 3d of December, and in his address the President spoke of the measures adopted for the preservation of neutrality, and the necessity for legislation on the subject in the following terms:

"As soon as the war in Europe had embraced those powers with whom the United States have the most extensive relations, there was reason to apprehend that our intercourse with them might be interrupted, and our disposition for peace drawn into question by the suspicions too often entertained by belligerent nations. * * * In this posture of affairs, both new and delicate, I resolved to adopt general rules which should conform to the treaties and assert the privileges of the United States. * * * Although I have not thought myself at liberty to forbid the sale of prizes permitted by our treaty of commerce with France to be brought into our ports, I have not refused to cause them to be restored when they were taken within the protection of our territory or by vessels commissioned or equipped [23] in warlike form within the limits of the United States. It rests with the wisdom of Congress to correct, improve, or enforce this plan of procedure, and it will probably be found expedient to extend the legal code and the jurisdiction of the courts of the United States to many cases which, though dependent on principles already recognized, demand some further provisions.

American State Papers, vol. i, page 21.

"Where individuals shall within the United States array themselves in hostility against any of the powers at war, or enter upon military expeditions, or enter prizes within the jurisdiction of the United States, or usurp and exercise judicial authority within the United States, or where the penalties on violations of the law of nations may have been indistinctly marked or are inadequate, these offenses cannot receive too early and close an attention, and require prompt and decisive remedies. * * * In like manner, as several of the courts have doubted, under particular circumstances, their power to liberate the vessels of a nation at peace, and even of a citizen of the United States, although seized under a false color of being hostile property, and have denied their power to liberate certain captures within the protection of our territory, it would seem proper to regulate their jurisdiction in these points."

Soon after the opening of the sessions Jefferson retired from the Cabinet into private life, and did not take any active part in politics for the next three years. Washington was thus left free to carry out his policy, and to establish relations with England on a more friendly footing.

Tucker, vol. i, page 526.

The early part of the session was occupied with discussions on the imposition of a protective duty on trade with nations not having commercial treaties with the United States. This measure was aimed at British trade, and was a consequence of the ill-feeling that had been occasioned by the British orders in council of June and November, 1793, authorizing the seizure of United States merchant-ships laden with corn for France, or found attempting to break the blockade.

The next measure introduced was for the construction of a navy, and was intended as a provision against the contingency of a war with England, although nominally adopted as a defense for American commerce against the Algerine pirates.

On the 27th of March Mr. Dayton, of New Jersey, offered a resolution for sequestering all debts due to British subjects, as a fund to indemnify citizens of the United States for the unlawful depredations of British cruisers.

Before any vote was taken Mr. Clarke, of New Jersey, proposed that all intercourse with Great Britain should be prohibited until satisfaction was obtained.

While these subjects were pending the President, on the 4th of April, communicated to Congress a dispatch from Mr. Pinckney, the United States minister in London, forwarding a copy of an order in council of the 8th of January, modifying the instructions to cruisers contained in the previous orders.

American State Papers, vol. i, p. 431.

This caused the popular feeling to incline in favor of England, and the republican or anti-federal party abandoned their scheme of commercial retaliation, and assented to a proposition made by the federalists, that a special mission should be sent to England to settle the various questions in dispute.

Tucker, vol. i, page 544.

Mr. Jay, Chief Justice of the Supreme Court, a descendant of one of the families which took refuge in England at the time of the revocation of the edict of Nantes, a federalist and friend of the English cause, was selected for the post of envoy.[1]

Vie de Washington, par De W...

He was nominated on the 16th of April, but did not arrive in London until the 15th of June.

The inadequacy of the existing law to deal with even the grossest breach of the neutrality proclamation had been shown a short time previously by the grand jury of Philadelphia having refused to find a true bill against the French Vice-Consul Duplaine, (the vice-consul whose exequatur had been withdrawn in October, 1793,) for the forcible rescue of the Greyhound.

[1] See the correspondence respecting Mr. Jay's mission, American State Papers, vol. i, pages 470 to 525. (There is an interesting report on the law of prize, furnished to Mr. Jay by Sir W. Scott and Dr. Nicholl, which deserves attention, page 494.)

It was apparent that no time must be lost in amending the law on this subject, and, in accordance with the recommendation in the President's message, a bill was now introduced for the purpose.

The bill was vigorously opposed by the republicans, and "would have been defeated in the Senate if repeated motions made with that view had not been lost by the vote of the Vice-President. The republican party had a majority in the Senate of one member, but the seat of Mr. Gallatin, from Pennsylvania, one of that majority, having been contested and set aside on the ground that he had not been a citizen so long as the Constitution required, the two parties were exactly balanced."

Lodge, vol. ... p. 48.

This act, which forms the basis of the United States neutrality laws, contains ten clauses, and is entitled "An act in addition to the act for the punishment of certain crimes against the United States." (The act thus referred to is the act of April 30, 1790, providing for the punishment of high treason and other offenses against the state or individuals.) As this act is substantially the same as the act of 1818, and as, in referring to that act, attention will be called to the points in which they differ, it will be sufficient to give here a short abstract of the different articles:

United States Statutes at Large; Third Congress, Session I, ch. 50, June 5, 1794.

British State Papers, (Hertslet's) vol. iv, page 339.

SEC. 1. Any citizen of the United States within the jurisdiction of the same accepting or exercising a commission to serve a foreign prince or state, by sea or land, liable to a fine of $2,000, or imprisonment for not more than three years.

SEC. 2. Any person within the jurisdiction of the United States entering himself, or enlisting others, or hiring or retaining another person to enlist for the service of the army or navy of any foreign prince or state, liable to a fine of $1,000, or three years' imprisonment. This not to apply to foreigners transiently within the United States. Any person so enlisted giving information within thirty days to be indemnified from punishment.

SEC. 3. Any person within any of the ports, harbors, bays, rivers, or other waters of the United States, fitting out and arming, or attempting to fit out and arm, or procuring to be fitted out and armed, or attempting to, &c., or knowingly concerned in the furnishing, &c., of any ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign state, to cruise or commit hostilities against the subjects, citizens, or property of another state, with which the United States shall be at peace, or commissioning any such vessel, to be liable to a fine of $5,000 or three years' imprisonment, and the vessel, tackle, &c., to be forfeited, one-half to the informer and the other half to the United States.

SEC. 4. Any person augmenting, or procuring to be augmented, the force of any ship of war in the service of a state at war with a state with which the United States are at peace, by adding to the number or size of the guns of such vessel, or by the addition thereto of any equipment solely applicable to war, to be liable to a fine of $1,000, or imprisonment for one year.

SEC. 5. Any person within the jurisdiction of the United States setting on foot or preparing any military enterprise against any state with which the United States are at peace, to be liable to a fine of $3,000, or one year's imprisonment.

SEC. 6. District courts to have cognizance of captures made within the waters, or within a marine league of the coasts or shores, of the United States.

SEC. 7. The militia or land or naval forces to be employed for enforcing this act, for detaining any vessel contravening it and her prizes, and for restoring such prizes when restoration may be adjudged, and for preventing illegal military expeditions.

[24] * SEC. 8. The militia, &c., to be employed as shall be necessary to compel any foreign ship or vessel to depart the United States in all cases in which, by the law of nations or the treaties of the United States, they ought not to remain within the United States.

SEC. 9. Prosecution of treason or piracy not to be impaired.

SEC. 10. The act to continue in force for two years, and thence to the end of the next session of Congress.[1]

This act afforded an answer to M. Genet's pretensions, and to Mr. Hammond's complaints. It now only remains to be seen how the British claims, acknowledged in Mr. Jefferson's letter of the 5th of September, 1793, were disposed of.

This was done [by the insertion in the treaty concluded by Mr. Jay on the 19th of November,[2] 1794, of articles providing for the appointment of commissioners to consider the compensation to be awarded (article VII) in cases of complaints made by United States merchants of loss and damage sustained "by reason of irregular or illegal captures or condem-

... Statutes at Large, ... p. 129.

[1] Reenacted March 2, 1797, and made perpetual April 24, 1800.

[2] This was the first treaty providing for a commission to investigate British and American claims. A second commission was appointed under the treaty of Ghent, of 1814, to consider claims arising from the seizure of slaves; and a third under the convention of February 8, 1853, for the general settlement of outstanding claims.

nations of their vessels and other property under color of authority or commissions from His Majesty;" and also in cases of complaints of His Majesty's subjects, "that in the course of the war they have sustained loss and damage by reason of the capture of their vessels and merchandise taken within the limits and jurisdiction of the States, and brought into the ports of the same, or taken by vessels originally armed in ports of the said States, * * * where restitution shall not have been made agreeably to the tenor of the letter from Mr. Jefferson to Mr. Hammond, dated at Philadelphia, September 5, 1793. And (article XXI) it is likewise "agreed that the subjects and citizens of the two nations shall not do any acts of hostility or violence against each other, nor accept commissions or instructions so to act from any foreign prince or state," &c.

"ART. XXIV. It shall not be lawful for any foreign privateers (not being subjects or citizens of either of the said parties) who have commissions from any other prince or state in enmity with either nation, to arm their ships in the ports of either of the said parties, nor to sell what they have taken," &c.

"ART. XXVIII. It is agreed that the first ten articles of this treaty shall be permanent, and the subsequent articles, except the twelfth, (providing for trade with the West Indies,) shall be limited in their duration to twelve years" from the exchange of ratifications.

As previously stated, Mr. Jefferson's letter of the 5th of September, 1793, was annexed to this treaty, so that the effect of the seventh article was to make compensation to Great Britain for all prizes taken by vessels fitted out by France in the United States after the 5th of June, 1793, (the date of Mr. Jefferson's letter of prohibition to M. Genet,) if such prizes had been brought into ports of the United States; but not to make compensation for any prizes brought in by vessels fitted out before the 5th of June, 1793, or for any prizes whatever not brought into United States ports.

Having thus traced the United States neutrality law from its origin in the proclamation of the 22d of April, 1793, to the act of 1794, it may be convenient to notice some of the principal decisions in the Supreme Court of cases illustrative of the operation of the law as thus originally framed.

February, 1794.—The sloop Betsy, (a vessel captured by the French privateer the Citizen Genet, and sent into Baltimore.)

Judgment.—No foreign power can rightfully erect any court of judicature within the United States, unless by force of a treaty. Decisions in the Supreme Court of the United States Curtis, vol. i, page 74

The admiralty jurisdiction exercised by consuls of France in the United States is not of right.

August, 1795.—Talbot *vs.* Janson. Case of a Dutch vessel, the Magdalena, brought into Charleston by the privateer L'Ami de la Liberté, alleged to have been an American-owned ship, armed and equipped in Chesapeake Bay and Charleston. Curtis, vol. i, page 128.

Judgment.—The capture of a vessel of a country at peace with the United States, made by a vessel fitted out in one of our ports, and commanded by one of our citizens, is illegal; and if the captured vessel is brought within our jurisdiction, the district courts, upon a libel for a tortious seizure, may inquire into the facts and decree restitution.

Restitution decreed with damages.

August, 1796.—Moodie *vs.* The Ship Alfred.

Judgment.—It is not a violation of the neutrality laws of the United States to sell to a foreigner a vessel built in this country, though suited to be a privateer, and having some equipments calculated for war, but frequently used by merchant-ships. Ibid, vol. i, page 234

Restitution refused.

August, 1796.—Moodie *vs.* The Ship Phœbe Anne.

Judgment.—Under the nineteenth article of the treaty with France a privateer has a right to make repairs in our ports. Ibid, vol. i, page 237.

The replacement of her force is not an augmentation of it.

Restitution refused.

In June, 1797, a short act was passed prohibiting any citizen of the United States, "without the limit of the same," from fitting out and arming, &c., any private ship or vessel of war with intent, &c., or taking the command of, or entering on board of, or purchasing any interest in any such vessel, under penalty of a fine of $10,000, or imprisonment for not more than ten years. United States Statutes at Large, vol. i, page 520. Fifth Congress, Session I, ch. 1, June 14, 1797

This act was entirely repealed by the act of 1818.

The restriction imposed on intercourse with France in 1799 by the act of Congress of the 8th of February, put a stop to any further privateering cases, and the next report of a decision affecting international relations occurs in February, 1804.

Church *vs.* Hubbart. Case of the Aurora, seized at Para for attempted smuggling. The case was brought before the United States court on an insurance claim. Curtis, vol. [illegible], page 470

In pronouncing judgment Chief Justice Marshall observed: "The authority of a nation within its own territory is absolute and exclusive. The seizure of a vessel within the range of its cannon by a foreign force is an invasion of that territory, and is a hostile act, which it is its duty to repel. But its power to secure itself from injury may certainly be exercised beyond the limits of its territory. Upon this principle the right of a belligerent to search a neutral vessel on the high seas for contraband of war is universally admitted."

A case arose in 1808 as to the validity of a capture by a French privateer of a ship dispatched from a port held by the Saint Domingo rebels, and the subsequent condemnation of her cargo in the court of the French delegate at Santo Domingo. (Rose *vs.* Himely. Case of the Sarah, February, 1808.) Among other matters affecting the law of prize, it was laid down that, whether a revolted colony is to be treated as a sovereign state, is a political question, to be decided by governments, not by courts of justice; and the courts of the United States must consider the ancient state of things as remaining until the sovereignty of the revolted colony is acknowledged by the Government of the United States.

Restitution decreed without costs.

In March, 1806, Miranda's expedition against Caracas was fitted out at New York. The expedition consisted of the Leander, armed vessel of eighteen guns, and two schooners. Miranda was met by two Spanish ships of war off Puerto Cabello. An action ensued, in which he lost his schooners, and was compelled to take refuge at Grenada. Fifty-seven of his followers were [25] taken in the schooners and carried to Puerto Cabello, where they were tried for piracy, ten of them condemned to death, and the rest to imprisonment.

President Jefferson, in his message to Congress of the 2d of December, 1806, speaks of this expedition in the following terms: "Having received information that, in another part of the United States, a great number of private individuals were combining together, arming, and organizing themselves, contrary to law, to carry on a military expedition against the territories of Spain, I thought it necessary, by proclamation as well as by special orders, to take measures for preventing and suppressing this enterprise, for seizing the vessels, arms, and other means provided for it, and for arresting and bringing to justice its authors and abettors. It was due to that good faith which ought ever to be the rule of action in public as in private transactions; it was due to good order and regular government, that while the public force was acting strictly on the defensive, and merely to protect our citizens from aggression, the criminal attempts of private individuals to decide for their country the question of peace or war by commencing active and unauthorized hostilities, should be promptly and efficaciously suppressed."

Writing to Don Valentine de Foronda in 1809, President Jefferson said of this transaction: "Your predecessor, soured on a question of etiquette against the administration of this country, wished to impute wrong to them in all their actions, even where he did not believe it himself. In this spirit he wished it to be believed that we were in unjustifiable co-operation in Miranda's expedition. I solemnly and on my personal truth and honor declare to you that this was entirely without foundation and that there was neither co-operation nor connivance on our part. He informed us he was about to attempt the liberation of his native country from bondage, and intimated a hope of our aid, or connivance at least. He was at once informed that although we had great cause of complaint against Spain, and even of war, yet whenever we should think proper to act as an enemy it should be openly and above board, and that our hostility should never be exercised by such petty means. We had no suspicion that he expected to engage men here, but merely to purchase military stores. Against this there was no law, nor consequently any authority for us to interpose obstacles. On the other hand, we deemed it improper to betray his voluntary communication to the agents of Spain. Although his measures were many days in preparation at New York, we never had the least intimation or suspicion of his engaging men in his enterprise until he was gone; and I presume the secrecy of this proceeding kept them equally unknown to the Marquis Yrujo at Philadelphia and the Spanish consul at New York, since neither of them gave us any information of the enlistment of men, until it was too late for any measures taken at Washington to prevent their departure. The officer in the customs who participated in this transaction with Miranda we immediately removed, and should have had him and others further punished had it not been for the protection given them by private citizens at New York, in opposition to the Government, who, by their impudent falsehoods and calumnies, were able to overbear the minds of the jurors."

Mr. Dana, in his recent edition of Wheaton, remarks: "The Spanish government complained that a military expedition had been fitted out in New York, under Miranda, in 1806, to operate against Spain in South America. There seems no doubt that this might and ought to have been prevented by us."

The war between Spain and her colonies broke out in 1810, and the

United States Government again found themselves placed in a position of great difficulty for maintaining their neutrality. The sympathies of the people of the United States were naturally warmly enlisted on behalf of their fellow-republicans; while it would appear that the equipment of vessels to cruise against Spanish commerce was a profitable as well as a popular undertaking, and became a kind of commercial speculation.

Correspondence between the governments of Spain and the United States, 1817–'18, and of Portugal and the United States, 1870–'71.

In December, 1810, a vessel named the Exchange, of Baltimore, was captured by a French privateer on a voyage to St. Sebastian's, in Spain; afterward coming to Philadelphia as a French public vessel under the name of the Balaou.

The Schooner Exchange *vs.* McFadden and others, February, 1812.

Cranch's [illegible] page 178.

The French captain averred that he had put into Philadelphia from stress of weather, and produced an affidavit of the French consul verifying his commission, and stating the public vessels of the Emperor of France never carry with them any other document or evidence that they belong to him than his flag, the commission, and the possession of his officers.

Judgment.—A public armed vessel in the service of a sovereign at peace with the United States is not within the ordinary jurisdiction of our tribunals, while in a port in the United States.

But the sovereign power of the United States may interpose and impart such a jurisdiction.

Restitution refused.

February, 1815.—The Brig Alerta and Cargo *vs.* Blas.

Cranch's [illegible] page 379.

Judgment.—If a capture be made by a privateer which had been illegally equipped in a neutral country, the prize-courts of such neutral country have power, and it is their duty, to restore the captured property, if brought within their jurisdiction, to its owner.

Vessel and cargo restored.

On the 1st of September, 1815, President Madison issued a proclamation prohibiting the outfit of illegal expeditions in the United States:

American State Papers, vol. iv, page 1.

"Whereas information has been received that sundry persons, citizens of the United States, or residents within the same, and especially within the State of Louisiana, are conspiring together to begin and set on foot, provide, and prepare the means for a military expedition or enterprise against the dominions of Spain, with which the United States are happily at peace; that for this purpose they are collecting arms, military stores, provisions, vessels, and other means, and deceiving and seducing honest and well-meaning citizens to engage in their unlawful enterprises; or organizing, officering, and arming themselves for the same, contrary to the laws in such cases made and provided: I have therefore thought fit to issue this my proclamation, warning and enjoining all faithful citizens who have been led, without due knowledge or consideration, to participate in the said unlawful enterprises, to withdraw from the same without delay, and commanding all persons whatsoever engaged or concerned in the same to cease all further proceedings therein, as they will answer the contrary at their peril. And I hereby enjoin and require all officers, civil and military, of the United States, or of any of the States or Territories, all judges, justices, and other officers of the peace, all military officers of the Army or Navy of the United States, and officers of the militia, to be vigilant, each within his respective department, and according to his functions, in searching out and bringing to punishment all persons engaged or concerned in such enterprises; in seizing and detaining, subject to the disposition of the law, all arms, military stores, vessels, or other means provided or providing for the same, and in general in preventing the carrying on such expedition or enterprise by all the lawful means within their power; and I require all good and faithful citizens and others within the United States to be aiding and assisting herein, and especially in the discovery, apprehension, and bringing to justice all such offenders, in preventing the execution of their unlawful combinations or designs, and in giving information against them to the proper authorities.

"JAMES MADISON.

"WASHINGTON, *September* 1, 1815."

In 1816 the Portuguese-Brazilian government intervened by force
[26] in Buenos Ayres, and thus became *a party to the contest between Spain and her South American colonies.

Annual Register, 1816.

In December of that year President Madison communicated to Congress the following message:

American State Papers, vol. iv, page 103.

"WASHINGTON, *December* 26, 1816.

"It is found that the existing laws have not the efficacy necessary to prevent violations of the obligations of the United States as a nation at peace toward belligerent parties, and other unlawful acts in the high seas by armed vessels equipped within the waters of the United States.

"With a view to maintain more effectually the respect due to the laws, to the character and to the neutral and pacific relations of the United States, I recommend to the

consideration of Congress the expediency of such further legislative provisions as may be requisite for detaining vessels actually equipped, or in a course of equipment, with a warlike force, within the jurisdiction of the United States; or, as the case may be, for obtaining from the owners or commanders of such vessels adequate securities against the abuse of their armaments, with the exceptions in such provisions of the cases of merchant-vessels furnished with the defensive armaments used on distant and dangerous expeditions, and of a private commerce in military stores permitted by our laws and which the law of nations does not require the United States to prohibit.

"JAMES MADISON."

The Committee of Foreign Affairs at the same time laid before the House of Representatives some papers relating to this subject, among which were a letter from the Secretary of State, (Mr. Monroe,) reporting "that the provisions necessary to make the laws effectual against fitting out armed vessels in our ports for the purpose of hostile cruising seem to be—

"1st. That they should be laid under bond not to violate the treaties of the United States or the obligations of the United States under the law of nations, in all cases where there is reason to suspect such a purpose on foot, including the cases of vessels taking on board arms and munitions of war, applicable to the equipment and armament of such vessels subsequent to their departure.

"2d. To invest the collectors, or other revenue officers where there are no collectors, with power to seize and detain vessels under circumstances indicating strong presumption of an intended breach of the law; the detention to take place until the Executive, on a full representation of the facts had thereupon can be obtained. The statute-book contains analogous powers to this above suggested. (See particularly the eleventh section of the act of Congress of April 25, 1808.)

"The existing laws do not go this extent. They do not authorize the demand of security in any shape, or any interposition on the part of the magistracy as a preventive, where there is reason to suspect an intention to commit the offense. They rest upon the general footing of punishing the offense where, if there be full evidence of the actual perpetuation of the crime, the party is bonded over after the trial to the penalty denounced."

On the 3d of March, 1817, a short act was passed, in which (in order to meet a question which had been raised as to whether the South American armies, not being formerly recognized as independent communities came within the scope of the act of 1794) the terms "army, district, or people" are inserted after the phrase "prince or states," as it stands in the first section of the act of 1794.

United States Statutes at Large, vol. iii, page 370.
Diplomatic and Foreign State Papers, vol. iv, page 389.

The recommendations of the President and Mr. Monroe were partially carried out by provisions in the second and third sections of this act for a bond being taken from the owners of suspected vessels.

The President in his message to Congress of the 2d of December, 1817, called attention to piratical establishments which had been constituted at Amelia Island and Galveston, and stated that instructions had been given for their suppression. "These establishments, if ever sanctioned by any authority whatever, which is not believed, have abused their trust and forfeited all claim to consideration."

American State Papers, vol. iv, page 130.

It appears that these places were used as rendezvous for smugglers and slave-dealers, who introduced slaves from them into the United States in defiance of the laws.

Amelia Island was in Spanish territory and had been the subject of negotiation between Spain and the United States.

Galveston was in the disputed territory on the Spanish and United States boundary.

American State Papers, vol. iv, page 132.

It appears that "among the avowed projects of the persons who had occupied Amelia Island was that of making a conquest of East and West Florida, professedly for the purpose of establishing there an independent government. * * * The greater part of West Florida being in the actual possession of the United States, this project involved in it designs of direct hostility against them; and, as the express object of the resolution and act of January 15, 1811, was to authorize the President to prevent the province of East Florida from passing into the hands of any foreign power, it became the obvious duty of the President to exercise the authority vested in him by that law."

Moreover, it was "a matter of public notoriety that two of the persons who had successively held the command at Amelia Island, whether authorized themselves by any government or not, had issued commissions for privateers, as in the name of the Venezuelan and Mexican governments, to vessels fitted out in the ports of the United States, and chiefly manned and officered by United States citizens."

The Galveston establishment was formed by a Commodore Oury, principally for the purpose of privateering and slave-dealing. He issued commissions in the name of the Mexican republic, and fitted out his vessels in United States ports, and brought his

prizes to Galveston, where they were condemned by a fictitious admiralty court, and the prize-vessels and cargoes afterward sent to the United States for sale. Some of these prizes were restored to the original owners by process in the Louisiana district court.

A United States force was dispatched against both these establishments, and in December, 1867, they were forcibly suppressed. Spain remonstrated against the occupation of Amelia Island, but the United States Government stated that it was a temporary measure which had been carried out in the public interest, and was not intended as an infraction of any Spanish rights of sovereignty.

American State Papers, volume 4, page 183.

In 1818 a further foreign enlistment act was passed, (April 3,) repealing and revising the acts of 1794, 1797, and 1817. This act is the one now in force.

United States Statutes at Large, vol. iii, page 447

The principal points in which it differs from the act of 1794 are as follows:

British and Foreign State Papers, vol. 5, page 382.

Section 1, instead of the words "foreign prince or state," the words ar "foreign prince, state, colony, district, or people," and so throughout the act.

Section 2 omits the last paragraph of indemnity to the informer.

Section 3 has "within the limits of the United States," instead of "within any of the ports, harbors, bays, rivers, or other waters." The penalty is made $10,000 instead of $5,000.

Section 4 has no corresponding clause in the act of 1794. It provides against the equipment of vessels "without the limits" of the United States to commit hostilities "upon the citizens of the United States or their property," under penalty of a fine of $10,000, or imprisonment for not more than ten years.

This clause is similar in its general provisions to the act of 1797, with the material difference that that act provided for the punishment of an offense committed "without the limits" of the United States upon "*the citizens or property of any prince or state with whom the United States are at peace,* or upon the citizens of the United States or their property."

Section 5 is the same as section 4 in the act of 1794, with the addition of "or by changing those on board of her for guns of a larger caliber" after the words "by
[27] adding to the number of the guns in such vessel."

Section 6, (same as section 5.) The penalty is made *one* year instead of *three* years' imprisonment.

Sections 7 and 8. Same as sections 8 and 9.

Sections 10 and 11. The "bonding" clauses are nearly the same as those in the act of 1817, and as they are of importance as constituting the chief difference between the English and American foreign-enlistment acts, are here given at length:

"SEC. 10. *And be it further enacted*, That the owners or consignees of every armed ship or vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace.

"SEC. 11. *And be it further enacted*, That the collectors of the customs be, and they are hereby, respectively authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart the United States, of which the cargo shall principally consist of arms and munitions of war, when the number of men shipped on board, or other circumstances, shall render it probable that such vessel is intended to be employed by the owner or owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign state, or of any colony, district, or people with whom the United States are at peace, until the decision of the President be had thereon, or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding sections of this act."[1]

Section 12 repeals the acts of 1794 and 1797.

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[1] Mr. Bemis, in his pamphlet on "American Neutrality," published at Boston in 1866, remarks: "To my own appreciation, both of these 'bonding' clauses, as they are called, had most of their neutral virtue taken out of them when Congress made them applicable—(1.) To 'vessels belonging wholly or in part to *citizens of the United States*,' thereby leaving *foreigners* at liberty to clear unneutrally armed ships; (see project of the act, Ann. Cong., 1816–17, p. 477, sec. 1.) (2.) When they limited the bond so as only to prevent '*such owners*' from cruising or committing hostilities instead of making the bond guard against belligerent employment of the vessel by '*any person to whom they* [such owners] *may sell or pretend to sell such vessel*,' (Ann Cong., 1816–'17, p. 478, sec. 2;) and (3) by requiring that any vessel, to be subject to detention, must have on board 'a cargo principally consisting of arms and munitions of war;' thus letting go at large a vessel armed to the teeth, and 'manifestly built for warlike purposes,' provided she adopts the precaution of taking *no such cargo* with her, and *is owned by foreigners*."

A few more decisions in the Supreme Court remain to be noticed:

The Divina Pastora, February, 1819.

1 Gr. 330. *Judgment.*—The Government of the United States having recognized the existence of a civil war between Spain and her colonies, our courts are bound to recognize as lawful those acts which war authorizes and the new government in South America.

Captures made under their commission must be treated by us like other captures.

Their legality cannot be determined in our courts, unless made in violation of our neutrality.

The pleadings being defective in form, the cause was remanded to the circuit court. The result does not appear.

February, 1819.—The Estrella.

1 Gr. 299. *Judgment.*—In the absence of any act of Congress on the subject, the courts of the United States would have authority, under the general law of nations, to decree restitution of property captured in violation of their neutrality.

Vessel and cargo restored with costs.

February, 1820.—La Amistad de Rues.

5 Wh. iv. p. 673. *Judgment.*—In cases of violation of our neutrality by any of the belligerents, if the prize comes voluntarily within our territory, it is restored to the original owners by our courts. But their jurisdiction for this purpose under the law of nations extends only to restitution of the specific property, with costs and expenses during the pendency of the suit, and does not extend to the infliction of vindictive damages or compensation for plunderage, as in ordinary cases of marine torts.

In delivering judgment, Chief Justice Story observed:

"We entirely disclaim any right to inflict such damages, and consider it no part of the duty of a neutral nation to interpose, upon the mere footing of the law of nations, to settle all the rights and wrongs which may grow out of a capture between belligerents. Strictly speaking, there can be no such thing as a marine tort between the belligerents. Each has an undoubted right to exercise all the rights of war against the other, and it cannot be a matter of judicial complaint that they are exercised with severity, even if the parties do transcend those rules which the customary laws of war justify. At least, they have never been held within the cognizance of the prize tribunals of neutral nations. The captors are amenable to their own government exclusively for any excess or irregularity in their proceedings, and a neutral nation ought not otherwise to interfere than to prevent captors from obtaining any unjust advantage by a violation of its neutral jurisdiction. Neutral nations may, indeed, inflict pecuniary or other penalties on the parties for any such violation; but it then does it professedly in vindication of its own rights, and not by way of compensation to the captured. When called upon by either of the belligerents to act in such cases, all that justice seems to require is that the neutral nation should fairly execute its own laws and give no asylum to the property unjustly captured. It is bound, therefore, to restore the property if found within its own ports; but beyond this it is not obliged to interpose between the belligerents. If, indeed, it were otherwise, there would be no end to the difficulties and embarrassments of neutral prize tribunals. They would be compelled to decide, in every variety of shape, upon marine trespasses *in rem* and *in personam* between belligerents, without possessing adequate means of ascertaining the real facts, or of compelling the attendance of foreign witnesses, and thus they would draw within their jurisdiction almost every incident of prize. Such a course of things would necessarily create irritations and animosities, and very soon embark neutral nations in all the controversies and hostilities of the conflicting parties. Considerations of public policy came, therefore, in aid of what we consider the law of nations in this subject, and we may add that Congress in its legislation has never passed the limit which is here marked out."

The action was brought on appeal from the district court which had ordered restitution and awarded damages against the captors on the ground of an illegal augmentation of force at New Orleans. The claimants having failed to prove such an augmentation of force before the supreme court, the sentence of the district court was reversed, and the prize restored to the captor (the Venezuelan privateer La Guerrière) and the damages disallowed, as stated above.

February, 1822.—The Santissima Trinidad and the St. Ander.

7 Wh. 290. This was a claim preferred by the Spanish consul, as representing the Spanish owners, for "eighty-nine bales of cochineal, two bales of jalap, and one box of vanilla, originally constituting part of the cargoes of the Spanish ships Santissima Trinidad and St. Ander, and alleged to have been unlawfully and piratically taken out of those vessels on the high seas, by a squadron consisting of two armed vessels, called the Independencia del Sud and the Altravida, and manned and commanded by persons assuming themselves to be citizens of the United Provinces of the Rio de la Plata."

Chief Justice Story thus stated the case as regarded the Independencia: "She

[28] was originally built and equipped at Baltimore as a privateer during the late war with Great Britain, and was then rigged as a schooner and called the Mammoth, and sailed against the enemy. After the peace she was rigged as a schooner and sold by her original owners. In January, 1816, she was loaded with a cargo of munitions of war, by her new owners, (who are inhabitants of Baltimore,) and being armed with twelve guns, constituting a part of her original armament. She was dispatched from that port under the command of the claimant on a voyage, ostensibly to the northwest coast, but in reality to Buenos Ayres. By the written restrictions given to the supercargo on this voyage, he was authorized to sell the vessel to the government of Buenos Ayres if he could obtain a suitable price. She duly arrived at Buenos Ayres, having exercised no act of hostility, but sailed under the protection of the American flag during the voyage. At Buenos Ayres, the vessel was sold to Captain Chaytor and two other persons; and soon afterward she assumed the flag and character of a public ship, and was understood by the crew to have been sold to the government of Buenos Ayres; and Captain Chaytor made known these facts to the crew, and asserted that he had become a citizen of Buenos Ayres, and had received a commission to command the vessel as a national ship, and invited the crew to enlist in the service, and the greater part of them accordingly enlisted. From this period, which was in May, 1816, the public functionaries of our own and other foreign governments at that port considered the vessel as a public ship of war, and such was her avowed character and reputation. No bill of sale of the vessel to the government of Buenos Ayres is produced, and a question has been made principally from this defect in the evidence, whether her character as a public ship is established. It is not understood that any doubt is expressed as to the genuineness of Captain Chaytor's commission, nor as to the competency of the other proofs in the cause introduced to corroborate it. The only point is, whether, supposing them true, they afford satisfactory evidence of her public character. We are of opinion that they do. In general the commission of a public ship, signed by the proper authorities of the nation to which she belongs, is complete proof of her national character. * * * The commission of a public ship when duly authenticated, so far at least as foreign courts are concerned, imports absolute verity and the title is not examinable. * * * * * * *

There is another objection urged against the admission of this vessel to the privileges and immunities of a public ship. * * * * It is that Buenos Ayres has not yet been acknowledged as a sovereign independent government by the Executive or legislature of the United States, and therefore is not entitled to have her ships of war recognized by our courts as national ships. We have in former cases had occasion to express our opinion on this point. The Government of the United States has recognized the existence of a civil war between Spain and her colonies, and has avowed a determination to remain neutral between the parties, and to allow to each the same right of asylum and intercourse. Each party is therefore deemed by us a belligerent nation, having, so far as concerns us, the sovereign rights of war, and entitled to be respected in the exercise of those rights. * * * * * * *

The next question growing out of this record is, whether the property in question was captured in violation of our neutrality, so that restitution ought, by the law of nations, to be decreed to the belligerents. Two grounds are relied upon to justify restitution: 1. That the Independencia and Altravida were originally equipped, armed, and manned as vessels of war in our ports. 2. That there was an illegal augmentation of the force of the Independencia within our ports. * * * *

The question as to the original illegal armament and outfit of the Independencia may be dismissed in a few words. It is apparent, that though equipped as a vessel of war, she was sent to Buenos Ayres on a commercial adventure, contraband, indeed, but in no shape violating our laws or our national neutrality. If captured by a Spanish ship of war during the voyage, she would have been justly condemnable as good prize, for being engaged in a traffic prohibited by the law of nations. But there is nothing in our laws, or in the law of nations, that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign parts for sale. It is a commercial venture, which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation. Supposing, therefore, the voyage to have been for commercial purposes, and the sale at Buenos Ayres to have been a *bona-fide* sale, (and there is nothing in the evidence before us to contradict it,) there is no pretense to say that the original outfit in the voyage was illegal, or that a capture made after the sale, for that cause alone, invalid.

On the second point, the court found that there had been a subsequent illegal augmentation of force both of the Independencia and of the Altravida, and on this ground the prize was ordered to be restored to the Spanish claimants.

February, 1822.—The Gran Pra.

Judgment—It is firmly settled that if captures are made by vessels 302. Curtis, vol. [illegible]
which have violated our neutrality acts, the property may be restored if brought within our territory.

A vessel armed and manned in one of our ports and sailing thence to a belligerent

port, with the intent thence to depart on a cruise with the crew and armament obtained here, and so departing and capturing belligerent property, violates our neutrality laws, and her prizes coming within our jurisdiction will be restored.

A *bona-fide* termination of the cruise for which the illegal armament was here obtained puts an end to the disability growing out of the violation of our neutrality laws, which does not attach indefinitely, but a colorable termination has no such effect.

The prize, bullion taken out of the Portuguese vessel Gran Para, and brought to Baltimore in September, 1818, in the capturing privateer Irresistible, sailing under the Artigan flag, was restored to the Portuguese claimants, with costs.

February, 1823.—La Nereyda.

This was an action brought by the Spanish consul for the recovery of the brig Nereyda.

The Nereyda was a Spanish ship of war, captured in 1818 by the privateer Irresistible, of which John Daniels was the commander and Henry Childs lieutenant, and which had been illegally equipped at Baltimore. The Nereyda was carried to the island of Margaritta under the command of Childs, as prize-master. It was alleged that at Margaritta the Nereyda was condemned as prize, and sold to one Franchesche; but no proof of the sale was adduced; and it appeared that during the short time she remained at Margaritta she was under the control of Childs, who obtained a commission as a privateer for her from the Venezuelan government, changed her name to the El Congresso de Venezuela, and sailed back in her to the United States, where she was eventually libeled at Baltimore.

Childs opposed the claim of the Spanish consul by a counter-claim on behalf of the alleged purchaser Franchesche.

The case was brought up on appeal from the district court. Time was allowed to the respondent to produce a copy of the judgment of the Margaritta prize-court, and also to show that the sale there was a real one, and Franchesche a *bona-fide* purchaser.

Childs failed to produce this evidence, and it having been shown that although four years had elapsed since the pretended sale, Franchesche had never asserted any rights over the vessel, which had continued in the possession of Childs and Daniels since the capture, the decree of the district court was reversed, and the vessel restored to the Spanish consul.

United States *vs.* Quincy, January, 1832.

The question before the court was as to the instructions which ought to have been given to the jury of the circuit court for the Maryland [29] district in a prosecution against John D. Quincy for a violation of the act of 1818.

In December, 1828, the Bolivar, a small vessel of 70 tons, sailed for Baltimore from St. Thomas under the command of Quincy, with her owner, Armstrong, on board. At St. Thomas Armstrong fitted her out as a privateer under the name of Las Damas Argentinas, to cruise under the Buenos Ayres flag against Brazil. Quincy continued to command her, and made some prizes. He afterward returned to the United States, and the prosecution in question was instituted against him for being concerned in fitting out the Bolivar.

Judgment.—"It is not necessary that the jury should believe or find that the Bolivar, when she left Baltimore and when she arrived at St. Thomas, and during the voyage from Baltimore to St. Thomas was armed, or in a condition to commit hostilities, in order to find the defendant guilty of the offense charged in the indictment.

"The first instruction, therefore, prayed on the part of the defendant must be denied, and that on the part of the United States given.

"The second and third instructions asked on the part of the defendant were:

"That if the jury believe that when the Bolivar was fitted and equipped at Baltimore the owner and equipper intended to go to the West Indies in search of funds, with which to arm and equip the said vessel, and had no present intention of using or employing the said vessel as a privateer, but intended, when he equipped her, to go to the West Indies, to endeavor to raise funds to prepare her for a cruise, then the defendant is not guilty.

"Or if the jury believe that when the Bolivar was equipped at Baltimore, and when she left the United States, the equipper had no fixed intention to employ her as a privateer, but had a wish so to employ her, the fulfillment of which wish depended on his ability to obtain funds in the West Indies for the purpose of arming and preparing her for war, then the defendant is not guilty.

"We think these instructions ought to be given. The offense consists principally in the intention with which the preparations were made. These preparations, according to the very terms of the act, must be made within the limits of the United States, and it is equally necessary that the intention with respect to the employment of the vessel should be formed before she leaves the United States. And this must be a fixed intention, not conditional or contingent, depending on some future arrangements. This intention is a question belonging exclusively to the jury to decide. It is the material

point on which the legality or criminality of the act must turn, and decides whether the adventure is of a commercial or warlike character.

"The law does not prohibit armed vessels belonging to citizens of the United States from sailing out of our ports; it only requires the owner to give security (as was done in the present case) that such vessels shall not be employed by them to commit hostilities against foreign powers at peace with the United States.

"The collectors are not authorized to detain vessels, although manifestly built for warlike purposes, and about to depart from the United States, unless circumstances shall render it probable that such vessels are intended to be employed by the owner to commit hostilities against some foreign power at peace with the United States.

"All the latitude, therefore, necessary for commercial purposes is given to our citizens, and they are restrained only from such acts as are calculated to involve the country in war."

Other cases might be quoted, but it is only intended to convey a general idea of the ruling of the United States courts in carrying out the neutrality laws. There does not appear to have occurred, either during the French war or the South American war, any case similar to the Alabama, where the vessel was dispatched to an unoccupied island, and there met by another vessel bringing her armament and crew. This, no doubt, is owing in some measure to the difficulty there might have been in carrying out such a project with sailing-vessels.

The Spanish and Portuguese claims arising out of the system of privateering pursued by American citizens under the flags of the revolted colonies have recently been so fully discussed in the communications between Lord Russell and Adams, respecting the Alabama and Shenandoah cases, that a short account of the correspondence will probably be sufficient for the purposes of the present memorandum.

Parliamentary Papers, North America, No. 1, 1861, &c.

The treaty between Spain and the United States of America of the 27th of October, 1795, contained the following stipulation:

"ARTICLE XIV. No subject of His Catholic Majesty shall apply for or take any commission or letters of marque for arming any ship or ships to act as privateers against the said United States, or against the said citizens, people, or inhabitants of said United States, or against the property of any of the inhabitants of any of them, from any prince or state, with which the United States shall be at war.

"Nor shall any citizen, subject, or inhabitant of the said United States apply for or take any commission or letters of marque for arming any ships to act as privateers against the subjects of His Catholic Majesty, or the property of any of them, from any prince or state with which the said King shall be at war. And if any person of either nation shall take such commissions or letters of marque he shall be punished as a pirate."

When diplomatic relations between Spain and the United States, which had been suspended in 1808, were renewed in 1815, the Spanish minister addressed a note to the Secretary of State containing proposals as the basis of negotiation for the settlement of the various differences in dispute between the two countries.

The Chevalier de Onis mentions, as one of the points on which an understanding was urgent—

"That the President will be pleased to give the necessary orders to the collectors of customs not to admit into the ports of the United States vessels under the insurrectionary flag of Carthagena, of the Mexican congress of Buenos Ayres, or of the other places which have revolted against the authority of the King, my master, nor those coming from them; that they should not permit them to land, or to sell in this country the shameful proceeds of their piracy or atrocities, and much less to equip themselves in these ports, as they do, for the purpose of going to sea, to destroy and to plunder the vessels which they may meet with under the Spanish flag. This tolerance, subversive of the most solemn stipulations in the treaties between Spain and the United States, and diametrically opposed to the general principles of public security and good faith, and to the laws of nations, produces the most melancholy effects on the interest and the prosperity of the subjects of His Catholic Majesty. Certain it is that neither Carthagena nor any other place in the Spanish dominions in this hemisphere, which has revolted, can be in communication with any power friendly to Spain, since neither on its part nor on that of any other government has their independence been acknowledged; and it is, consequently, an offense against the dignity of the Spanish monarchy, and against the sovereignty of the King, my master, to admit vessels from such places, manned and commanded by insurgents, and armed in the dominions of this confederation; particularly as they are all pirates who do not respect any flag, are justly considered the disgrace of the seas, and are execrated by all nations."—(The Chevalier de Onis to the Secretary of State, December 30, 1815.)

American State Papers, vol. iv, page 426

British State Papers, vol. iii, page 1[illegible]

Mr. Monroe replied:

"With regard to your third demand, the exclusion of the flag of the revolting prov-

inces, I have to observe that, in consequence of the unsettled state of many countries, and repeated changes of the ruling authority in each, there being at the same time several competitors, and each party bear-
[30] ing his appropriate flag, the President "thought it proper, some time past, to give orders to the collectors not to make the flag of any vessel a criterion or condition of its admission into the ports of the United States."

And he added:

"What will be the final result of the civil war which prevails between Spain and the Spanish provinces in America, is beyond the reach of human foresight. It has already existed many years, and with various success—sometimes one party prevailing and then the other. In some of the provinces the success of the revolutionists appears to have given to their cause more stability than in others. All that your government had a right to claim of the United States was, that they should not interfere in the contest, or promote, by any active service, the success of the revolution, admitting that they continued to overlook the injuries received from Spain, and remained at peace. This right was common to the colonists. With equal justice might they claim that we would not interfere to their disadvantage; that our ports should remain open to both parties, as they were before the commencement of the struggle; that our laws regulating commerce with foreign nations should not be changed to their injury. On these principles the United States have acted."—(Mr. Monroe to the Chevalier de Onis, January 19, 1816.)

On the 10th of June, 1816, Mr. Monroe forwarded to the Chevalier de Onis a copy of a report from M. Dick, attorney of the United States for the district of Louisiana, dated March 1, 1816, denying the Chevalier's allegations of the open enlistment of men and equipment of expeditions to serve against Spain:

"A regard to truth makes it necessary to say that what is alleged respecting the arming and fitting out of vessels within the waters of Louisiana, to be employed in the service of the revolutionary governments against the subjects or property of the King of Spain, is unfounded. At no period since the commencement of the struggle between the Spanish colonies and the mother country have vessels, to be employed in the service of the colonies, been permitted to fit out and arm or to augment their force at New Orleans or elsewhere within the State of Louisiana.

"On the contrary, it is notorious that at no one point of duty have the civil and military authorities of the United States directed more strenuously, or, it is believed, more successfully, their attention than to the discovering and suppression of all attempts to violate the laws in these respects. Attempts to violate them by fitting out and arming and by augmenting the force of vessels have no doubt been frequent, but certainly in no instance successful, except where conducted under circumstances of concealment that eluded discovery and almost suspicion, or where carried on at some remote point of the coast beyond the reach of detection or discovery. In every instance where it was known that these illegal acts were attempting, or where it was afterward discovered that they had been committed, the persons engaged, as far as they were known, have been prosecuted, while the vessels fitted out, or attempted to be fitted out, have been seized and libeled under the act of the 5th of June, 1794; and when captures have been made by vessels thus fitted out and armed, or in which their force was augmented or increased within our waters, where the property taken was brought within our jurisdiction, or even found upon the high seas by our cruisers and brought in, it has been restored to the original Spanish owners, and, in some instances, damages awarded against the captors."

Mr. Dick appended a list showing that during the year 1815 seven persons had been prosecuted and six vessels libeled under the act of 1796—of which three were condemned—and prizes restored to the Spanish claimants in nine cases.

It does not appear, however, that the measures adopted by the officers of the United States Government, referred to by Mr. Dick, were efficacious in preventing violations of the foreign-enlistment act to the satisfaction of the Spanish minister, for on the 2d of January, 1817, he addressed a further representation to the Secretary of State:

"The mischiefs resulting from the toleration of the armament of privateers in the ports of this Union, and of bringing into them, with impunity, the plunder made by these privateers on the Spanish trade, for the purpose of distributing it among those merchants who have no scruple in engaging in these piracies, have arisen to such a height that I should be wanting in my duty if I omitted to call your attention again to this very important subject. It is notorious that, although the speculative system of fitting out privateers, and putting them under a foreign flag, one disavowed by all nations, for the purpose of destroying the Spanish commerce, has been more or less pursued in all the ports of the Union, it is more especially in those of New Orleans and Baltimore, where the greatest violations of the respect due to a friendly nation, and, if I may say so, of that due to themselves, have been committed; whole squadrons of pirates having been out from thence, in violation of the solemn treaty existing between the two nations, and bringing back

to them the fruits of their piracies, without being yet checked in these courses, either by the reclamations I have made, those of His Majesty's consuls, or the decisive and judicious orders issued by the President for that purpose."

M. de Onis complains in this note of the proceedings of several privateers at Baltimore, New York, Norfolk, and New Orleans.

No answer seems to have been returned to M. de Onis's note.

In January, February, and March M. de Onis sent in twelve other notes in the same strain, and on the 28th of March the Acting Secretary of State informed him that inquiry would be made, and "adequate redress and punishment enforced should it appear that the laws have been infringed by any of the acts complained of."

British State Papers, vol. [illegible], pages 268-270.

Five more notes from M. de Onis followed, principally complaining of the captures effected by the Independencia del Sud and Altravida, (see case of Santissima Trinidad,) and the asylum afforded to those vessels as well as to the Congress, Mongore, and other privateers in American ports.

State Papers, vol. [illegible], pages 580-597.

On the 22d of April the Acting Secretary of State inquired whether M. de Onis had power to conclude a treaty, as, if not, it was "deemed improper to entertain discussions of the kind invited by" his late notes.

Ibid, pages 598.

M. de Onis continued his representations in eight more notes, in one of which, addressed to Mr. John Quincy Adams, dated the 2d of November, 1817, he says:

Ibid, pages 308-11.

"It is very disagreeable to me to have to repeat to you, sir, what, unfortunately, I have been several times under the necessity of submitting to the President through the medium of your predecessors, namely, that the act of Congress of the 3d of March, 1817, has in nowise lessened the abuses by which the laws are evaded, and render entirely illusory the laudable purposes for which they were enacted. From the greater part of the ports of these States there frequently sail a considerable number of vessels, with the premeditated intention of attacking the Spanish commerce, which carry their armament concealed in the hold. It rarely happens that they can be arrested, inasmuch as the collectors of customs say that they have not at their disposition the naval force necessary to effect it; on the other hand, armed vessels, under the flag of the insurgents, enter into the ports of the Union and not only supply themselves with all necessaries, but also considerably increase the means they already have of destroying the trade of Spain, as has recently been the case at New York, whereby the (so-called) privateers of His Majesty's revolted provinces, which are, in reality, nothing more than pirates, manned by the scum of all countries, enjoy greater privileges than the vessels of independent powers."

American State Papers, vol. iv, page 199.

In May, 1818, M. de Onis, referring to a French expedition prepared in Phila-
[31] delphia under General *Lallemand, and which was supposed to be intended to operate against Mexico, stated to Mr. Adams:

"I would have considered myself dispensed from the necessity of again pressing this subject on your attention if it had appeared possible for me to restrain these armaments by the employment of judicial means, but, unfortunately, the act of Congress of the 20th of April last, for preserving neutrality with foreign nations, and others already in force, although highly judicious, are easily eluded; and although these practices are public and notorious throughout the whole Union, His Majesty's consuls advise me that, through a deficiency of evidence, they cannot be restrained by a regular application of the law."—(The Chevalier de Onis to Mr. Adams, May 7, 1818.)

British State Papers, vol. vi, page 225.

On the 9th of June, 1818, M. de Onis represented that there were then at Baltimore four privateers, the Independencia del Sud, the Mongore, the Republicano, and the Alerta, three of which were notoriously fitted out ether and the fourth was a schooner captured from Spanish owners. All these vessels were commanded by Americans, and manned, with scarcely an exception, by American crews; that, however clear the facts might be to everybody, it was in vain to seek evidence to prove them, as "a great portion of the commercial people of Baltimore being interested in the cases which produce my present reclamations, no one is willing to come forward and offer testimony against what is termed the general interest."

British State Papers, vol. v... p. 226.

M. de Onis continued his complaints during the summer of 1818, and called attention particularly to the purchase and equipment of two privateers at New York.

Mr. Adams at length replied as follows:

"I have received your letters of the 27th ultimo and 5th instant, with their respective inclosures, all of which have been laid before the President. With regard to the two vessels alleged to have been equipped at New York, for the purpose of cruising under the flag of Buenos Ayres against Spanish subjects, the result of the examination which has taken place before a judge of the Supreme Court of the United States has doubtless convinced you that no prosecution commenced by the Government of the United States against the persons charged with a violation of

Ibid, vol. vi, p. 20...

their laws and their neutrality could have been necessary or useful to you, no transgression of the law having been proved against them.

* * * * * * * *

"I am further instructed by the President to assure you of the satisfaction with which he has seen, in the last paragraph of your letter, your expectation of being speedily enabled to make proposals containing the basis of a treaty which may adjust, to mutual satisfaction, all the existing differences between our two nations, and his earnest hope that this expectation, in the fulfillment of which this Government have confided, and adopted measures corresponding with it, may be realized at an early day."

Negotiations were shortly afterward set on foot for the conclusion of a treaty between the two countries, for the settlement of the differences which had so long existed between them, and among the proposals put forward by the Spanish government were a mutual renunciation of "all claims for damages or injuries which they themselves or their respective subjects or citizens may have suffered," and the adoption of such laws or measures as might be required "to remedy and cut up by the roots the abuses which, contrary to the law of nations, and contrary to what is expressly stipulated in the treaty of 1795, above cited, daily occur in some ports of this Union, in consequence of the vague and arbitrary interpretation which it seems the measures until now adopted are susceptible of, and by which means the law is eluded."—(Mr. Adams to the Chevalier de Onis, October 24, 1818.)

M. de Onis to Mr. Adams, October 24, 1818. State Papers, vol. 5, p. 265.

Ibid., pages 267 277.

The United States Government assented to the mutual renunciation of claims, but refused the other proposal, as they considered there was no occasion for any new laws or declarations. "Of the many complaints which you have addressed to this Government in relation to alleged transactions in our ports, the deficiency has been, not in the meaning or interpretation of the treaty, but in the proof of the facts which you have stated, or which have been reported to you, to bring the cases of complaint within the scope of the stipulations of the treaty."—(Mr. Adams to M. de Onis, October 31, 1818.)

British State Papers, vol. vi, p. 281.

To this the Spanish minister rejoined:

"Whatever may be the forecast, wisdom, and justice conspicuous in the laws of the United States, it is universally notorious that a system of pillage and aggression has been organized in several ports of the Union against the vessels and property of the Spanish nation; and it is equally so, that all the legal suits hitherto instituted by His Catholic Majesty's consuls, in the courts of their respective districts, for its prevention, or the recovery of the property, when brought into this country, have been, and still are, completely unavailing. The artifices and evasions by means of which the letter of the law has, on these occasions, been constantly eluded, are sufficiently known, and even the combination of interests, in persons who are well known, among whom are some holding public offices. With a view to afford you and the President more complete demonstration of the abuses, aggressions, and piracies alluded to, I inclose you correct lists, extracted from authentic documents deposited in the archives of this legation, exhibiting the number of privateers or pirates fitted out in the United States against Spain, and of the prizes brought by them into the Union, as well as of those sent to other ports, together with the result of the claims made by the Spanish consuls in the courts of this country. Among them you will find the case of two armed ships, the Horatio and Curiazo, built at New York, and detained by His Majesty's consul there, on the ground of their having on board 30 pieces of cannon concealed, with their carriages, and a crew of 160 men. On which occasion it was pretended that it could not be proved that these guns were not an article of commerce, and they finally put to sea without them, the extraordinary number of officers and crew passing for passengers. The number of privateers, or pirates, fitted out or protected in the ports of this Republic, as well as of the Spanish prizes made by them, far exceeds that contained in the within lists; but I only lay before your Government those of which I have certain and satisfactory proofs. The right of Spain to an adequate indemnity for all the spoilations committed by these privateers or pirates, on the Crown and subjects of His Catholic Majesty, is undeniable: but I now submit it to your Government, only to point out the extreme necessity of putting an end to these continued acts of hostility and depredation, and of cutting short these enormous and flagrant abuses and evils, by the adoption of such effectual precautions and remedies as will put it out of the power of cupidity or ingenuity to defeat or elude them. In vain should we endeavor amicably to settle and accommodate all existing differences, and thus establish peace and good understanding between the two nations, if the practice of these abuses, and the course of these hostilities and piracies on the commerce and navigation of Spain, should, as heretofore, continue uninterrupted in the United States."—(The Chevalier de Onis to Mr. Adams, November 16, 1818.

British State Papers, vol. vi, p. 285.

The Secretary of State in reply expressed the readiness of his Government to con-

tinue the negotiations, provided the Spanish minister would consent to waive a certain portion of his proposition, (relating to the transactions in Florida, and the western boundary;) but added, that if he did not feel at liberty to proceed with the negotiations on those terms, he (Mr. Adams) was ready to exchange with him the ratifications of the convention of 1802.—(Mr. Adams to M. de Onis, November 30, 1818.)

State Papers, vol. vi, page 291.

On the 22d of February, 1819, a treaty of amity, settlement and limits was concluded at Washington between the United States of America and His Catholic Majesty, and the following is a statement of the claims which each party consented to renounce:

[32] *ARTICLE IX. "The two high contracting parties, animated with the most earnest desire of conciliation, and with the object of putting an end to all the differences which have existed between them, and of confirming the good understanding which they wish to be forever maintained between them reciprocally, renounce all claim for damages or injuries which they themselves, as well as their respective citizens and subjects, may have suffered until the time of signing this treaty.

State Papers, vol. viii, page 530.

"The renunciation of the United States will extend—

"1. To all the injuries mentioned in the convention of 11th of August, 1802.

"2. To all claims on account of prizes made by French privateers and condemned by French consuls within the territory and jurisdiction of Spain.

"3. To all claims of indemnities on account of the suspension of the right of deposit at New Orleans in 1802.

"4. To all claims of citizens of the United States upon the Spanish government, statements of which, soliciting the interposition of the Government of the United States, have been presented to the Department of State or to the minister of the United States in Spain, since the date of the convention of 1802, and until the signature of this treaty.

"The renunciation of His Catholic Majesty extends—

"1. To all the injuries mentioned in the convention of 11th August, 1802.

"2. To the sums which His Catholic Majesty advanced for the return of Captain Pike from the Provincias Internas.

"To all injuries caused by the expedition of Miranda, which was fitted out and equipped at New York.

"*To all claims of Spanish subjects upon the Government of the United States, arising from unlawful seizures at sea or within the ports and territorial jurisdiction of the United States.*

"Finally, to all the claims of subjects of His Catholic Majesty upon the Government of the United States, in which the interposition of His Catholic Majesty has been solicited before the date of this treaty, and since the date of the convention of 1802, or which may have been made to the department of foreign affairs of His Majesty, or to his minister in the United States.

"And the high contracting parties respectively renounce all claim to indemnities for any of the recent events or transactions of their respective commanders and officers in the Floridas.

"The United States will cause satisfaction to be made for the injuries, if any, which by process of law shall be established to have been suffered by the Spanish officers and individuals Spanish inhabitants by the late operations of the American army in Florida."

This treaty concludes the published correspondence respecting the Spanish claims.

The correspondence between Portugal and the United States will be found in a convenient shape for reference in the appendix to the Alabama papers, republished by Messrs. Longmans, Green & Co. in 1867.

It was laid before Congress on the 4th of February, 1852, together with the correspondence relating to the claims of United States citizens in Portugal, arising out of the case of the General Armstrong.

Executive Documents, House of Representatives, No. 53, Thirty-second Congress, 1st session.

See, also, British State Papers, vol. 222. The following is the succinct account of this correspondence given in Lord Russell's note to Mr. Adams of the 30th of August, 1865, (Parliamentary Papers, North America, No. 1, 1866, p. 26:)

"The correspondence to which I refer began in December, 1816, and closed with a letter of the Portuguese minister in November, 1850. It cannot be pretended that the reclamations of a friendly power extending over 34 years did not receive the gravest attention of the American Government."

In his first letter the Portuguese envoy at Washington complains that Mr. Taylor, of Baltimore, an American citizen, had directed Captain Fish, of the Romp, an American ship, to cruise as a privateer under the insurgent colors of Buenos Ayres, against the subjects of Portugal.

He adds: "The 18th of last month (November) the frigate Clifton, Captain Davis, armed with 32 guns of various calibers, and a crew of 200 men, sailed from Baltimore

for Buenos Ayres. This ship anchored below that port, where it has remained for about a fortnight or more waiting for the American ship Independence of the South, armed with 16 guns, and for the ships Romp, Tachahoe, Montezuma, and Spanker, and two others newly constructed, which were fitting with great activity and which had not yet got names. All were to sail together to cruise in the eastern and western seas of South America, under the insurgent colors of Buenos Ayres. No doubt can be entertained of their instructions being the same as those of Captain Fish, and that they will act hostilely against Portuguese ships."

The Portuguese envoy, Joseph Correa de Serra, prays for an amendment of the law of the United States with a view to render it more efficient in such cases. A law having been passed by Congress for this purpose, the Portuguese envoy in May, 1817, requests that the President will desire the United States officers on the outposts to use greater vigilance.

In March, 1818, he complains that three Portuguese ships have been captured "by privateers fitted in the United States, manned by American crews, and commanded by American captains, though under insurgent colors."

In October of the same year the Portuguese envoy complains that a Portuguese prize is fitting in the Patuxent to cruise against Portuguese commerce.

In November of the same year the Portuguese minister states to Mr. Adams that, obliged by his duty to inquire into the nature of the armed ships that had of late insulted the flag of his sovereign, and committed incalculable depredations on the property of his subjects, he had found, to his sorrow, multiplied proofs that many of them were owned by citizens of the United States, and had been fitted in the ports of the Union. He goes on to complain of the difficulties in the way of prosecutions, but compliments the President on his "honorable earnestness."

In December of the same year the Portuguese minister complains of the armed vessel Irresistible, which had been committing "depredations and unwarrantable outrages on the coast of Brazil." He says, it is proved by depositions that John Daniels, the commander of the ship, is an American, and all the crew are Americans. He prays that, if the ship should come into an American port, means may be taken to bring the said captain and crew within reach of the laws made to punish such scandalous proceedings.

In March, 1819, M. Correa de Serra states, as minister of his sovereign, that Artigas, whose flag is frequently waving in the port of Baltimore, and which is carried by Portuguese prizes in the ports of the Union, has been expelled far from the countries which could afford him the power of navigating, and has not a foot length of sea-shore in South America where he can show himself. He prays that the Artigan flag may be declared illegal.

In November, 1819, after expressing his gratitude for the proceedings of the Executive, the same minister complains that the evil is rather increasing. He is in possession of "a list of fifty Portuguese ships, almost all richly laden, some of them East Indiamen, which had been captured during a period of profound peace." One city alone on the coast of the United States had twenty-six armed ships which preyed on Portuguese commerce, "and a week ago three armed ships of this kind were in that port waiting for a favorable occasion for sailing on a cruise."

In June, 1820, the Portuguese minister complains that a Portuguese prize had been sold by auction at Baltimore, to Captain Chase, (a notorious privateersman,) and was to be immediately fitted out as a privateer to cruise against the Portuguese Indiamen.

[33] In July of the same year, the Portuguese minister sends a list of "the names and value of nineteen Portuguese ships and their cargoes, taken *by private armed ships, fitted in the ports of the Union, by citizens of those States.*" His sovereign wishes the affair to be treated with that candor and conciliating dignified spirit which becomes two powers who feel a mutual esteem, and have a proper sense of their moral integrity. "In this spirit I have the honor to propose to this Government to appoint commissioners on their side, with full powers to confer and agree with His Majesty's ministers on what reason and justice demand."

In December, 1820, the Chevalier Amado Grehon transmitted to Mr. Adams a copy of twelve claims, with the value of the ships, desiring him to add them to the list furnished by the Chevalier Correa de Serra.

In April, 1822, the same minister repeats the proposal made in July, 1820, "of having recourse to commissaries chosen by both Governments for the purpose of arranging the indemnities justly due to Portuguese citizens for the damage which they have sustained by reason of piracies supported by the capital and the means of citizens of the United States; an essential condition which, in this way repairing the past, secures also the future."

On the 25th of May, 1850, the chargé d'affaires of Portugal, writing to the Secretary of State of the United States, declares, "The undersigned is authorized to come to an understanding with the new Secretary of State upon the subject, and to submit the voluminous documents and papers in his possession to the joint examination and de-

cision of the commissioners or arbitrators appointed by the American Government, on the one part, and the undersigned on behalf of Her Majesty's government, on the other," &c.

Having thus related the complaints of the Portuguese government during the years which elapsed from 1816 to 1822, and from 1822 to 1850, I will now give from the organs of the United States the answers which that government gave to these solemn and reiterated complaints.

In March, 1817, the Secretary of State transmitted to the Portuguese minister at Washington an act of Congress, passed on the 3d of that month, to preserve more effectually the neutral relations of the United States. On the 14th of March, 1818, in answer to a letter complaining of the capture of three Portuguese ships by privateers, Mr. Adams says:

"The Government of the United States having used all the means in its power to prevent the fitting out and arming of vessels in their ports to cruise against any nation with whom they are at peace, and having faithfully carried into execution the laws enacted to preserve inviolate the neutral and pacific obligations of this Union, cannot consider itself bound to indemnify individual foreigners for losses by capture, over which the United States have neither control nor jurisdiction. For such events no nation can in principle, nor does in practice, hold itself responsible. A decisive reason for this, if there were no other, is the inability to provide a tribunal before which the facts can be proved.

"The documents to which you refer must of course be *ex parte* statements, which in Portugal or in Brazil, as well as in this country, could only serve as a foundation for actions in damages, or for the prosecution and trial of the persons supposed to have committed the depredations and outrages alleged in them. Should the parties come within the jurisdiction of the United States, there are courts of admiralty competent to ascertain the facts upon litigation between them, to punish the outrages which may be duly proved, and to restore the property to its rightful owner should it also be brought within our jurisdiction, and found, upon judicial inquiry, to have been taken in the manner represented by your letter. By the universal law of nations the obligations of the American Government extend no further."

The Secretary of State in subsequent letters promises to prosecute in the United States courts persons chargeable with a violation of the laws of the United States in fitting out and arming a vessel within the United States for the purpose of cruising against the subjects of the Queen of Portugal.

To the proposal to appoint commissioners made in July, 1820, the United States Secretary of State, on the 30th of September of the same year, replies as follows:

"The proposal contained in your note of the 16th of July last has been considered by the President of the United States with all the deliberation due to the friendly relations subsisting between the United States and Portugal, and with the disposition to manifest the undeviating principle of justice by which this Government is animated in its intercourse with all foreign governments, and particularly with yours. I am directed by him to inform you that the appointment of commissioners to confer and agree with the ministers of His Most Faithful Majesty upon the subject to which your letter relates, would not be consistent either with the Constitution of the United States, *nor with any practice usual among civilized nations.*"

He proceeds to say:

"If any Portuguese subject has suffered wrong by the act of any citizen of the United States, within their jurisdiction, it is before those tribunals that the remedy is to be sought and obtained. For any acts of citizens of the United States, committed out of their jurisdiction and beyond their control, the government of the United States is not responsible.

"To the war in South America, to which Portugal has for several years been a party, the duty and the policy of the United States has been to observe a perfect and impartial neutrality."

The same reply is again given to Chevalier Amado Grehon in a letter dated the 30th of April, 1822:

"I am at the same time directed to state that the proposition of the Chevalier Correa de Serra, in his note of the 16th of July, 1820, for the appointment of commissaries chosen by both Governments to arrange indemnities claimed by Portuguese citizens for damages stated by them to have been sustained by reason of piracies supported by the capital and means of citizens of the United States, cannot be acceded to. It is a principle well known and well understood that no nation is responsible to another for the acts of its citizens, committed without its jurisdiction and out of the reach of its control."

The policy of the United States is further explained in a dispatch of Mr. Secretary Adams to General Dearborn, dated the 25th of June, 1822. It is there set forth that, in the critical state of the relations of the two countries, it is necessary to employ the agency of a person fully qualified to represent the interests of the United States. It

is affirmed that whenever Portuguese captured vessels have been brought within the jurisdiction of the United States, decrees of restitution have been pronounced.

In referring, however, to the list of captures, and the demand of a joint commission to determine and assess the damages to be paid by the United States, the former refusal was thus repeated: "As there was no precedent for the appointment of such a commission under such circumstances, and as not a single capture had been alleged for which the United States were justly responsible, this proposal was of course denied; and nothing further was heard upon the subject until the 1st of April last, when a note was received from the present chargé d'affaires of Portugal, leading to a correspondence, copies of which are now furnished you."

The correspondence seems not to have been resumed till 1850, when, as has been shown, the demand for a commission was repeated.

The Secretary of State of the United States thereupon gave this summary and final answer, dated May 30, 1850:

"The undersigned is surprised at the re-appearance of these absolute reclamations, accompanied by the renewal of the ancient proposition to appoint a joint com-
[34] mission to determine and assess damages, a *proposition which was rejected at the time upon substantial grounds; and without the minister's assurance to that effect the undersigned would not have supposed it credible that Portugal seriously cherished any intention to revive them. In reply, therefore, to the note which the minister of Her Most Faithful Majesty has presented in the name of his government, the undersigned must now, by the President's order, inform him that he declines re-opening the proffered discussion."

This dispatch is signed "John M. Clayton."

A long and able dispatch of the Portuguese minister at Washington, recapitulating all the grievances of Portugal, dated November 7, 1850, does not appear to have received an answer.

After the close of the war between Spain and Portugal, Brazil and the South American provinces, the foreign-enlistment act seems not to have been called into requisition in any prominent case until 1848, when the United States prohibited a ship of war, purchased for the German fleet during the war with Denmark, from sailing from New York, except under the bond required by the act of 1818.

In 1850 a remarkable instance was afforded of the manner in which the foreign-enlistment act could openly be defied, when the sympathies of the American people were in favor of the offenders, in the expedition against Cuba under Lopez.

Lopez had been for some time preparing an expedition for the invasion of Cuba, and on the 7th of May, 1850, left New Orleans in a steamer with about 500 men, accompanied by two other vessels, and on the 17th landed at Cardenas, a small town on the northwest side of the island. Lopez occupied the town; but shortly afterward troops arrived from Havana, and he was compelled to re-embark and escape to Savannah.

Annual Register 1850.

On the 27th of May Lopez was arrested, (see Judge Betts's charge in the Times of the 13th of June, 1850,) but "no delay being granted by the district judge to procure evidence against him, he was discharged, amid the cheers of a large crowd. On the 15th of July forty-two of the country prisoners (passengers) were liberated by the Spanish authorities and were taken to Pensacola by the United States ship Albany. Ten of them were retained for trial. On the 21st of July the grand jury of the United States district court of New Orleans found a true bill against Lopez and fifteen others for violating the act of 1818. The government failed in making out its case against one or two of the parties, and finally abandoned the prosecution."

Memoirs of losses in the New York Herald, quoted in the Chronicle of the 23d of September, 1851.

Undeterred by the failure of the first expedition, Lopez at once set to work to organize another, in which he was "countenanced, aided, and joined by citizens of the United States." * * * "Very early in the morning of the 3d of August, 1851, a steamer called the Pampero departed from New Orleans for Cuba, having on board upward of 400 armed men, with evident intentions to make war upon the authorities of that island." The United States Government having received intelligence that such designs were entertained, had issued a proclamation warning American citizens of their unlawful character, and had also given instructions to the proper officers of the United States. However, in spite of all these measures, the steamer in which the filibusters were embarked "left New Orleans stealthily and without a clearance, and after touching at Key West, proceeded to the coast of Cuba."

President's message, December 1, 1851 Annual Register, 1851.

The expedition landed in Cuba on the 12th of August, and proved an entire failure. The Spanish troops defeated the invaders without difficulty, and either took prisoners or dispersed the whole body. Fifty of the prisoners were shot, and Lopez publicly executed at Havana. The intelligence of the execution of Lopez and the prisoners, forty of whom are stated to have been Americans, produced a great excitement in the United States. A riot took place at New Orleans, in which the Spanish consulate was sacked, mass-meetings were held at the principal cities for the purpose of denouncing

the conduct of the Cuban authorities, and further expeditions projected. The Spanish government, however, released and sent back to the United States a number of prisoners, who complained bitterly of having been deceived by Lopez by exaggerated accounts of the condition of affairs in Cuba; and the public feeling in the United States gradually cooled down without any more attempts being made against the island.

In 1855 the Maury was detained at New York on the information of Her Majesty's consul that she was intended for a Russian privateer. The evidence, however, failed, and Sir Joseph Crampton, Her Majesty's minister, withdrawing the charge against her, the Maury sailed, and nothing more was heard of the matter. It was supposed that she really was intended for a privateer to act in the China seas, but that the peace of 1856 prevented her from being thus used.

The expeditions of Miranda in 1806, and of Lopez in 1850 and 1851, were rivaled in flagrant violation of the foreign-enlistment act by the proceedings of Walker and the Central American filibusters in 1857, 1858, 1859.

The disturbed state of the Central American republics, especially Nicaragua, rendered them a tempting prey to such adventurers, and in November, 1857, it was notorious that Walker was fitting out a filibustering expedition.

On the 10th of that month he was arrested at New Orleans, and held to bail in $2,000 (about £400) to appear on the 11th for examination, on a charge of infringing the act of 1818. On the morning of the 11th, however, he embarked with 300 unarmed followers for Mobile, where the party were met by a steamer called the Fashion, with fifty recruits on board, and set sail, as was supposed, for Central America. The United States Government gave orders for them to be pursued, and Commodore Paulding succeeded in arresting Walker.

In reporting these occurrences, Lord Napier, then Her Majesty's minister at Washington, states, "I believe that the President and General Cass sincerely deprecate and regret the present attempt to invade the peace of Central America." (Lord Napier to the Earl of Clarendon, November 16, 1857.)

Parliamentary Paper, correspondence respecting Central America, 1856–'60. Presented 1860, page 67.

It does not appear whether Walker was brought to trial for this offense, but if so the proceedings could not have been very efficacious, as in the following year he renewed his preparations for an expedition on a larger scale, and on the 30th of October, 1858, President Buchanan issued a proclamation:

"Whereas information has reached me, from sources which I cannot disregard, that certain persons, in violation of the neutrality laws of the United States, are making a third attempt to set on foot a military expedition within their territory against Nicaragua, a foreign state with which they are at peace." . .

Ibid., p. 136.

"From these circumstances the inference is irresistible that persons engaged in this expedition will leave the United States with hostile purposes against Nicaragua. They cannot, under the guise which they have assumed that they are peaceful emigrants, conceal their real intentions, and especially when they know in advance that their landing will be resisted, and can only be accomplished by an overpowering force. This expedient was successfully resorted to previous to the last expedition, and the vessel in which those composing it were conveyed to Nicaragua obtained a clearance from the collector of the port of Mobile. Although, after a careful examination, no arms or munitions of war were discovered, yet when they arrived in Nicaragua they were found to be armed and equipped, and immediately commenced hostilities. The leaders of former illegal expeditions of the same character have openly expressed their intention to renew hostilities against Nicaragua. One of them, who has already been twice expelled from Nicaragua, has invited, through the public newspapers, American citizens to emigrate to that republic, and has designated
[35] Mobile as the place of rendezvous and departure, and San Juan del Norte as the port to which they are bound. This person, who has renounced his allegiance to the United States, and claims to be president of Nicaragua, has given notice to the master of the port of Mobile that two or three hundred of these emigrants will be prepared to embark from that port about the middle of November," &c.

Notwithstanding this proclamation, the filibusters succeeded in sailing from Mobile on the 7th of December 1858, in the Susan without a clearance. A revenue-cutter attempted to stop her, but was forcibly resisted. Two other vessels, the Fashion and the Washington, with military stores, afterwards joined the Susan, but the expedition broke down in consequence of the Susan being wrecked. Walker and his followers then proceeded to California by the Isthmus of Panama, whence they intended to make a descent on Punta Arenas.

Ibid., p. 163.

This attempt was not carried into execution, and Walker returned to Louisiana and organized a further expedition. The United States Government gave directions to stop it, and concerted measure with the British and French governments to prevent any such expeditions landing on the coasts of Central America. Moreover, 150 of the men concerned in the last attempt were arrested at New Orleans.

Nevertheless, Walker eluded the vigilance of the authorities, and again escaped without a clearance in the Fashion from Mobile in November, 1859, having deceived the collector of customs by applying for a clearance, which the collector refused, for another steamer called the Philadelphia. At the same time a large force of filibusters are stated to have got away from Charleston, Mobile, and other ports, by means of false papers and other similar devices.

Ibid., pp. 296, 297.

In June 1860, Walker, with a party of American filibusters, is reported to have arrived at the Bay Islands in the John A. Taylor. Walker's career was eventually brought to a close by his being shot at Truxillo, September, 1860.

Ibid., p. 328.

On the 6th of June, 1866, the President published a proclamation warning United States citizens against engaging in an apprehended expedition against Canada, (the Fenian raid,) and on the 5th of June the Attorney-General instructed the district attorneys and marshals to arrest "all prominent, leading, or conspicuous persons called 'Fenians' whom they had probable cause to believe have been or may be guilty of violations of the neutrality laws." Some prosecutions were subsequently instituted against certain of the Fenian leaders, but abandoned.

In 1866 a resolution was adopted by the House of Representatives which resulted in an inquiry by the Committee on Foreign Affairs into the operation of the foreign enlistment act of 1818; and in July General Banks presented the report of the committee with a draught of a bill by which it was proposed to alter the provisions of that act. The principal alterations proposed were the omission of section 4, (the clause forbidding the fitting out of privateers in foreign ports to cruise against American commerce,) section 6 and part of 8, (giving the President power to stop military expeditions) and sections 10 and 11, the bonding clauses.

Mr. Bemis's pamphlet, American Neutrality, 1866.

The intention of this draught bill was to make the American act correspond with the British act, or, as was said at the time, to "scale down" the one to the proportions of the other. The report of the committee called forth a pamphlet by Mr. Bemis, in which he shows how inexpedient and impolitic the proposed alterations would have been, and compares the amended act with the British statute.

Copies of this pamphlet have been circulated among the commissioners.

Congress adjourned shortly after this report was presented and had been referred to the Senate, and in March, 1867, the Senate Committee on Foreign Affairs were "discharged from further consideration" of the bill.

In the mean while, a case had been brought before the district court at New York, in which the act of 1818 was enforced against a vessel alleged to be intended for the Chilian service in the war between Chili and Spain.

New York Herald, March 1, 1867.

This vessel, the Meteor, had been built as a ship of war for sale to the United States Government, but the civil war having terminated, the sale was not effected. She was acknowledged to have been built to carry 11 or 12 guns, and the negotiations of the agent of the owners for her sale to the Chilian government were shown by conclusive evidence.

The vessel was libeled in the district court in February 1866, but Judge Betts's decision in the case was not formally given until November.

The World, New York, November 30, 1866.

In the elaborate judgment then delivered, the standard decisions of the Supreme Court are reviewed at length.

The following are some of the more important passages:

The crime denounced is fitting out or arming.

It was strenously urged by the counsel for the claimant, on the hearing, that the only crime created by the third section of the act of 1818 is the crime of fitting out *and* arming a vessel with the intent named in the statute: and, that although the attempt to commit that crime, or the procuring that crime to be committed, or the being knowingly concerned in committing that crime, is punishable under the statute, yet the body of the crime is the fitting out *and* arming, and nothing short of that is punishable under the statute, either against the wrong-doer personally, or against the offending *res*; and the interpretation sought to be put by the counsel upon these words of the statute, "or shall knowingly be concerned in the furnishing, fitting out, or arming of any ship or vessel, with intent," &c., is that it is not necessary to the criminality of the individual that he should have performed every part of the crime, but it is enough if he was knowingly concerned in any one step in the chain of conduct which completed the criminality, or would have completed it if carried out, but still the crime must be the crime of fitting out *and* arming, either completed or attempted. But the court cannot adopt this interpretation of the statute. The mischief against which the statute intended to guard was not merely preventing the departure from the United States of an armed vessel, but the departure of any vessel intended to be employed in the service of any foreign power, to cruise or commit hostilities against any other foreign power with whom the United States are at peace. The neutrality of the Government

of the United States, in a war between two foreign powers, would be violated quite as much by allowing the departure from its ports of an unarmed vessel with the clear intent to cruise or commit hostilities against one of the belligerents, as it would be by permitting the departure from its ports of an armed vessel with such intent. If the intent to cruise or commit hostilities exist when the vessel departs, and the vessel is one adapted to the purpose, the subsequent arming is a very easy matter. The facility with which this can be done was made manifest in the case of the Shenandoah and other vessels which, during the late rebellion, left England unarmed, but with the full intent on the part of those who sent them forth that they should be used to cruise and commit hostilities against the United States, and were subsequently armed in neutral waters. It would be a very forced interpretation of the statute to say that it was not an offense against it to knowingly fit out a vessel with everything necessary to make her an effective cruiser, except her arms, and with the intent that she should become such a cruiser, because it should not be shown that there was any intent that she should be armed within the United States. The evil consequences which would flow from interpreting the statute to mean that the crime must include the arming of the vessel within the United States, become especially apparent in reference to that part of the third section which forbids the issuing or delivering a commission, within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be
[36] em*ployed for the purpose named in the section. Under such an interpretation of the statute it would be no offense to issue or deliver a commission within the United States for any vessel, unless such vessel were actually armed at the time or perhaps were intended to be armed prior to her departure from the United States; and it would be no offense to issue a commission within the United States for a vessel fitted and equipped to cruise or commit hostilities, and intended to cruise and commit hostilities, so long as such vessel was not armed at the time, and was not intended to be armed within the United States, although it could be shown that a clear intent existed on the part of the person issuing or delivering the commission that the vessel should receive her armament the moment she should be beyond the jurisdiction of the United States.

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The Santissima Trinidad case.

Much reliance was placed by the counsel for the claim, in his summing up, upon the doctrine supposed by him to have been laid down by the Supreme Court in the case of the Santissima Trinidad. That doctrine was stated by the counsel in various forms, but the principle contended for was, that freedom of commerce is allowed to a neutral to furnish to a belligerent warlike materials or warlike vessels, as articles of merchandise or traffic; that while the principle of the law of nations is recognized, which prohibits neutral territory from being used by either belligerent as a vantage ground from which he may sally forth to commit hostilities upon the other belligerent, yet the right of citizens of the neutral country to sell all that their industry produces for purposes of war, as fair matter of trade, to any belligerent, cannot be interfered with; that it is no offense and no violation of neutrality to sell a vessel of war, armed or not armed, in our ports, to a belligerent power; and that there is the same right, under the law of nations, to sell in our ports an armed vessel under such circumstances, that there is to sell guns or ammunition or any other raw material. At another stage of his argument the counsel maintained the proposition, that unless it appeared affirmatively that the vessel was to sail out from the port of New York as an enlisted hostile ship of one belligerent, there was no criminality, although it should be made to appear by indisputable proof that she had been built, fitted, armed, and equipped, as a ship of war, complete and ready for action.

The views thus pressed upon the court have, in its judgment, no foundation in public law, or in any decision that has been made by the highest judicial tribunal of the United States. The case of the Santissima Trinidad was decided by the Supreme Court at the February term, 1822.

Judge Betts then gives an account of the facts of the case, (*vide ante,*) and continues:

In the course of his opinion, Mr. Justice Story discourses the point taken that the Independencia was originally armed and fitted out in the United States contrary to law, and says "It is apparent that though equipped as a vessel of war, she was sent to Buenos Ayres on a commercial adventure," &c., &c. These views of Mr. Justice Story were, as is apparent from the statement which has been made of the case, *obiter dicta,* and not necessary to the decision of the cause, restitution of the property being decreed upon the ground of the illegal augmentation of the force of the capturing vessel in our ports prior to the capture. The facts in regard to the commercial adventure of the Independencia, referred to by Mr. Justice Story, as they appear in the report of the case, were that that vessel, having been a privateer during the war between the United States and Great Britain, was, after the peace, sold by her original owners, and loaded by her new ones, at Baltimore, in January 1816, with a cargo of munitions of war;

that she sailed from Baltimore with them, and armed with 12 guns, part of her original armament to Buenos Ayres, under written instructions from her owners to her supercargo, authorizing him to sell the vessel to the government of Buenos Ayres if he could obtain a suitable price; and that she was sold at Buenos Ayres to parties who again sold her, so that she became a public commissioned vessel of the government of Buenos Ayres. It was on these facts that Judge Story remarked that the vessel, though equipped as a vessel of war, was sent to Buenos Ayres on a commercial adventure, in no shape violating our laws or our national neutrality, and that there is nothing in our laws or in the law of nations that forbids our citizens from sending armed vessels to foreign ports for sale. If the Messrs. Forbes, or any of the owners of the Meteor, or Mr. Cary, their agent, or any of the parties concerned in the transactions in regard to the Meteor, had testified before the court on this trial that the Meteor was going out to Panama on a purely commercial adventure, to be sold there if a suitable price could be obtained, and if it appeared that there was no intent on the part of the owners or any other person that the vessel should be used to violate the neutrality of the United States, there might be some pretense that this case was within the principle thus laid down by Mr. Justice Story. But the whole testimony points in a different direction. The transactions with the agents of Chili at New York, in regard to the Meteor, was, it is true, a commercial adventure, in so far that the vessel was sold, and that such sale was a matter of trade or commerce at New York, between her owners and the agents of the government of Chili. But in the sense in which Mr. Justice Story speaks of the sending of the Independencia to Buenos Ayres, on a commercial adventure, there was no commercial adventure in the case of the Meteor.

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The doctrines laid down in this case are the result of the legislative, executive, and judicial action of the United States.

The importance of this case, not merely in view of the pecuniary value of the vessel proceeded against, but also in respect to the principles of public law involved in it, have led the court to a more extended discussion of those principles than would otherwise have been necessary. The court, however, entertains no doubt as to the correctness of the doctrines of public law which it has applied to the present case. Those doctrines are the result of the legislative, executive, and judicial action of the public authorities and courts of the United States in a great variety of cases, and the court has nowhere found a more excellent summary of them than in *Wheaton's International Law, (8th edition, with notes by Dana,* pages 562, 563, note 215:) "As to the preparing of vessels within our jurisdiction for subsequent hostile operations, the test we have applied has not been the extent and character of the preparations, but the intent with which the particular acts are done. If any person does any act or attempts to do any act toward such preparation with the intent that the vessel shall be employed in hostile operations, he is guilty, without reference to the completion of the preparations, or the extent to which they may have gone, and although his attempt may have resulted in no definite progress toward the completion of the preparations. The procuring of materials to be used knowingly and with the intent, &c., is an offense. Accordingly, it is not necessary to show that the vessel was armed, or was, in any way or at any time before or after the act charged, in a condition to commit acts of hostility. "Our rules do not interfere with *bona-fide* commercial dealings in contraband of war. An American merchant may build and fully arm a vessel, and provide her with stores, and offer her for sale in our own market. If he does any acts as an agent or servant of a belligerent or in pursuance of an arrangement or understanding with a belligerent, that she shall be employed in hostilities when sold, he is guilty. He may, without violating our law, send out such a vessel, so equipped, under the flag and papers of his own country, with no more force of crew than is suitable for navigation, with no right to resist search or [37] seizure, and to take the chances of capture as contraband merchandise, of blockade, and of a market in a belligerent port. In such case, the extent and character of the equipments is as immaterial as in the other class of cases. The intent is all. The act is open to great suspicions and abuse, and the line may often be scarcely traceable: yet the principle is clear enough. Is the intent one to prepare an article of contraband merchandise, to be sent to the market of a belligerent, subject to the chances of capture and of the market? Or, on the other hand, is it to fit out a vessel which shall have our port to cruise, immediately or ultimately, against the commerce of a friendly nation? The latter we are bound to prevent; the former the belligerent must prevent."

The judgment was given against the vessel, but she was eventually restored to her owners under bond, and what became of her afterwards does not appear.

It must be remembered that this opinion of Judge Betts was not reviewed by the Supreme Court, and is therefore of inferior authority.

It has been much criticised both in this country and in the United States.

This brings the history of the American foreign enlistment-act down to the present time.

In 1838, on the outbreak of the rebellion in Canada, the United States Government issued a proclamation cautioning United States citizens from assisting in it.

A strong military force was also sent to the frontier, and the President delivered a message to Congress recommending the enactment of some special measure to meet the occasion. In the mean while an expedition was openly organized at Detroit. This expedition seized the arsenal and the steamboats and ships lying off the Detroit wharves, and succeeded in getting off to Canada without hinderance. A military force was then ordered to the frontier, and sent to Plattsburg, where another expedition was said to be fitting out. A bill for the prevention of such expeditions was introduced into Congress, but not passed until the 10th of March, by which time the rebellion was nearly subdued.

British and Foreign State Papers, vol. xxv, page —0.

Correspondence with Mr. Fox, Her Majesty's minister at Washington.

Mr. Fox, No. 5, January 29, 1838.

Mr. Fox, No. 7, February 5, 1838.

This act, which was limited to two years, provided for the seizure and detention of any vessel, vehicle, or arms, or munitions of war "provided or prepared for any military expedition or enterprise against the territory or dominions of any foreign prince or state, or of any colony, district, or people, conterminous with the United States."

United States Statutes at Large, vol. v, page 212.

THE BRITISH FOREIGN-ENLISTMENT ACT.

The United States foreign-enlistment act, as will have been seen, arose from the construction put on the terms of the treaty with France of 1778; the British foreign-enlistment act may also be said to have arisen from the provision of a treaty; that with Spain of the 28th of August, 1814.

This treaty, or, as it is called, "Additional Articles to the Treaty of July 5, 1814," contains the following article:

"ARTICLE III. His Britannic Majesty being anxious that the troubles and disturbances which unfortunately prevail in the dominions of His Catholic Majesty in America should entirely cease, and the subjects of those provinces should return to their obedience to their lawful sovereign, engages to take the most effectual measures for preventing his subjects from furnishing arms, ammunition, or any other article to the revolted in America."

British and Foreign State Papers, vol. 1, page 292.

In 1818 the reactionary policy of King Ferdinand, the prohibitory duties imposed by him on British commerce, and the ingratitude with which he treated British officers and others who had served his cause in Spain, had provoked a great deal of irritation in England; and there was a considerable party in the House of Commons, headed by Sir James McIntosh, who were prepared to support the claims of the Spanish-American colonies to independence.

Expeditions were said to be in preparation for rendering active assistance both to the malcontents in Spain and to the rebels in America, in spite of a proclamation forbidding such expeditions, which had been published in 1817; and the government consequently found that it was necessary, in order to keep good faith with Spain, and to prevent infractions of British neutrality, to bring in an act of Parliament to provide for the case which now for the first time arose in modern history, of Great Britain being neutral at the time of a great maritime war.

The history of the British neutrality law at that period is thus stated by Sir R. Phillimore:

"The statute of the third of James I, chapter four, made it felony for any person whatever to go out of the realm, to serve any foreign prince, without having first taken the oath of allegiance before his departure. It was felony also for any gentleman, or person of higher degree, or for one who had borne any office in the army, to go out of the realm to serve such foreign prince or state, without previously entering into a bond with two sureties, not to be reconciled to the See of Rome, or enter into any conspiracy against his natural sovereign. And further it was enacted by statute 9 Geo. II, c. 30, enforced by statute 29 Geo. II, c. 17, if any subject of Great Britain shall enlist himself, or if any person shall procure him to be enlisted in any foreign service, or detain or embark him for that purpose, without license under the King's sign-manual, he shall be guilty of felony without benefit of clergy; but if the person, so enlisted or enticed, shall discover his seducer within fifteen days, so as he may be apprehended and convicted of the same, he shall be indemnified. It was, moreover, by statute 29 Geo. II, c. 17, enacted that to serve under the French King, as a military officer, shall be felony without benefit of clergy; and to enter into the Scotch brigade, in the Dutch service, without previously taking the oaths of allegiance and abjuration, shall be a forfeiture of £500."

Phillimore's International Law, vol. III, ed. 1857, page 212

The act for the amendment of the neutrality laws was introduced by Mr. Canning on the 10th of June, 1819, in an eloquent speech, in the course of which he said:

"It surely could not be forgotten that in 1793 this country complained of various breaches of neutrality (though much inferior in degree to those now under consideration) committed on the part of subjects of the United States of America. What was the conduct of that nation in conse-

Cobbett's Parliamentary Debates, vol. xl, page 1103.

quence? Did it resent the complaint as an infringement of its independence? Did it refuse to take such steps as would insure the immediate observance of neutrality? Neither. In 1794, immediately after the application from the British government, the legislature of the United States passed an act prohibiting, under heavy penalties, the engagement of American citizens in the armies of any belligerent power. Was that the only instance of the kind? It was but last year that the United States passed an act by which the act of 1794 was confirmed in every respect, again prohibiting the engagement of their citizens in the service of any foreign power; and pointing distinctly to the service of Spain or the South American provinces.

On the other hand, Sir James McIntosh inveighed against the act as a left-handed neutrality, and as aimed at the struggling independence of South America. Sir W. Scott spoke in favor of the bill on the third reading on the 21st of June, and it was passed by a majority of sixty-one.

Many amendments had, however, been introduced into it, and among others the insertion of the words "as a transport or store-ship" in the seventh clause. This was intended to prevent British ships being hired to take troops from Spain to America; but the result has been to create the greatest confusion of meaning in the act.

The passing of this act seems to have put a stop, for the time at least, to the dispatch of expeditions against Spain; and in April, 1823, Lord Althorp moved for the repeal of the act. Mr. Canning, in reply, entered into the question of the neutrality of England, and pointed out that, far from being aimed exclusively at South America, this act was in reality in favor [38] of the colonies, as it extended to Spain the prohibition "to export arms, &c., which had been already provided for against them by the treaty of 1814. Referring to the United States law, he said:

Colchett's Parliamentary Debates, new series, Vol. viii, page 1019.

"If I wished for a guide in a system of neutrality, I should take that laid down by America in the days of the presidency in Washington and the secretaryship of Jefferson. In 1793, complaints were made to the American Government that French ships were allowed to fit out and arm in American ports, for the purpose of attacking British vessels, in direct opposition to the laws of neutrality. Immediately upon this representation, the American Government held that such a fitting out was contrary to the laws of neutrality; and orders were issued prohibiting the arming of any French vessel in American ports. At New York, a French vessel fitting out was seized and delivered over to the tribunals and condemned. Upon that occasion the American Government held that such fitting out of French ships in American ports for the purpose of cruising against English vessels was incompatible with the sovereignty of the United States, and tended to interrupt the peace and good understanding which subsisted between that country and Great Britain. Here, I contend, is the principle of neutrality upon which we ought to act. It was upon this principle that the bill in question was enacted."

The motion was rejected by a majority of 106.

The neutrality law of the United States having formed the foundation of the neutrality law of this country, and the decisions of the judges of that country having been, as it were, incorporated in the law of nations, the application of the United States foreign-enlistment act has been treated of at some length, but as it would be useless to attempt within the compass of a memorandum to go into the intricate questions of "intent," "equipping, fitting out, or arming," &c., &c., which have at various times been raised under the British act, it is only proposed to mention some of the leading instances in which it has been put into operation or suspended.

In 1827 an expedition of four vessels, under the command of Count Saldanha, sailed from Plymouth, ostensibly for Brazil, but in reality, as was supposed, to operate against the party of Don Miguel in Terceira. Her Majesty's ship Walpole, with some gun-boats, was sent to Terceira to intercept this expedition. This was done off Port Praya, and the Walpole escorted the expedition back to the Channel. It eventually went to Brest. The Walpole subsequently stopped another expedition off Port Praya which had sailed from London.

Phillimore, Vol. iii, page 229.

In 1835 an order in council was passed exempting British subjects engaging in the service of Isabella of Spain from the penalties of the foreign-enlistment act. This enabled the Spanish legion, under Sir De Lacy Evans, to be formed. A debate took place on the question in June, 1835, but the competency of the Crown to make such a relaxation was not disputed.

Phillimore, Vol. iii, pages 218 and 229.

In 1846 certain British merchants complained that an expedition was being prepared to sail under General Florez against Ecuador. Their representation was supported by several of the South American ministers. It appeared that three vessels, the Glenelg, Monarch, and Neptune, were ready to set sail with a large number of emigrants, or, as it was said, troops on board, and that men had been openly enlisted for General Florez's service. The vessels were seized and condemned.[1]

[1] There is no record of the trial in the foreign office.

In 1847 the Portuguese minister complained that the Black Cat was being fitted out to proceed with volunteers for the Portuguese rebel service. The vessel was seized, but released.

Correspondence with Baron Moncorvo, April and May, 1847.

Shortly afterward he made another complaint of a number of British subjects having taken service at Oporto under the revolutionary leaders. He was told in reply that the English law did not extend to such acts committed in a foreign country.

A Mr. Hislop, however, who had returned from Portugal after serving in the rebel army, was denounced by the Portuguese minister, and would have been proceeded against had the law officers considered the evidence sufficient.

On the 30th of August, 1862, an order in council was issued, suspending the foreign-enlistment act, so far as to enable Captain Osborn and Mr. Lay to enter the service of the Emperor of China "to fit out, equip, purchase, and acquire ships or vessels of war for the use of the said Emperor, and to engage and enlist British subjects to enter the military and naval service of the said Emperor." This permission to remain in force until the 1st of September, 1864.

The license granted by this order in council was extended to "all military officers in Her Majesty's service," by the order in council of the 9th of January, 1863, with a similar limitation to the 1st of September, 1864.—(Hertslet's Commercial Treaties, vol. xi, pp. 665–683.)

It will be observed that in all, or nearly all, the cases up to the time of the American civil war the foreign-enlistment act had been invoked to prevent the enlistment and dispatch of recruits and soldiers rather than the equipment of vessels.

The American civil war introduced a new series of cases, in which the foreign-enlistment act was called into operation. These are so well known that it will be sufficient merely to name them in the order as they occurred.

Creto, tried at Nassau; released August, 1862.

Alexandra, tried in England.

This was the celebrated cause in which all the issues as to the meaning of the equipment clauses of the foreign-enlistment act were raised. The vessel was acquitted, the four judges in the exchequer court being equally divided in opinion; the junior withdrew. The costs and damages were compromised by the government for £3,700, and the vessel sailed for Nassau. Here she was again seized and remained under seizure until the end of the war.

The iron-clads El Tousson and Mounassir, at Liverpool, said to have been ordered for the Egyptian government. The ships were seized, but eventually purchased by government, and are now Her Majesty's ships Wivern and Scorpion.

The Canton or Pampero. This vessel was seized in the Clyde, and the builder allowed judgment to be taken against him. She remained under seizure until the close of the war, and has now become notorious under the name of the Tornado.

There were five prosecutions for enlisting men to serve in confederate vessels:

Mr. Rumball, the officer of Sheerness dock-yard, who took part in the equipment of the Rappahannock. He was acquitted February 4, 1865, although the case against him was a very strong one.

Messrs. Jones and Highat for enlisting men for the confederate service. They were convicted and sentenced, November 23, 1864, to pay a fine of £50 each.

Campbell, enlisting for Georgia, pleaded guilty, and released on recognizances of £150 to appear when called upon.

Seymour, Cunningham, and Buchanan, convicted of enlisting for Rappahannock, and discharged on recognizances.

Coptain Corbett, who commanded the vessel that took out the armament and crew to the Shenandoah at the Desertas off Funchal. A very strong case, but the evidence for the prosecution as to the actual enlistment of men broke down and Captain Corbett was acquitted.

The cases of the Alabama, Shenandoah, and Georgia are fully explained in the parliamentary papers, of which copies have been furnished to the commissioners.

For an epitome of the representations addressed to Her Majesty's government, by Mr. Adams, during the civil war, see the memorandum annexed to Lord Russell's letter to Mr. Adams of November 3, 1865, (Parl. Paper, North America, No. 1, 1866, p. 139.)

CHAS. S. A. ABBOTT.

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[39] *Appendix No. IV.

REPORTS FROM FOREIGN STATES, DECLARATIONS OF NEUTRALITY, ETC.

The accompanying circular was sent by the foreign office to Her Majesty's representatives at the courts of the following countries: Austria, Belgium, Denmark, France, Italy, The Netherlands, Portugal, Prussia, Spain, Sweden, United States.

FOREIGN OFFICE, *February* 14, 1867.

The commission which has been appointed by the Queen to consider the neutrality laws of this country being desirous of obtaining information respecting similar laws in other maritime countries, I have to instruct you to ascertain and report, with as little delay as possible, what laws, regulations, or other means the government to which you are accredited possess for preventing acts within their territories of which belligerents might complain as a violation of the duties of neutrality.

And the following papers were received in reply:

AUSTRIA.

(Received from Her Majesty's embassy at Vienna.)

Note from the minister of foreign affairs to Her Majesty's embassador.

Mr. Bonar, Her Britannic Majesty's chargé d'affaires, was pleased to make inquiry of the imperial minister of foreign affairs as to what laws, regulations, or measures are laid down by the government of His Imperial Majesty, in order to prevent transactions in their territory of which belligerent powers might complain as being an infringement of the neutrality laws. After consulting the competent authorities, the minister of foreign affairs has now the honor to communicate to Lord Bloomfield, &c., &c., &c., with reference to the above question, as follows:

The declaration signed in Paris by the representatives of Austria, France, Great Britain, Prussia, Russia, Italy, and Turkey, on the 18th of April, 1856, concerning the rights of neutrals in naval warfare, has been published in legal course in Austria, and constitutes, therefore, a law generally in force.

Apart from the principles which lie at the foundation of this declaration, there exists, however, no law in Austria, or any other order generally binding, which could be made to apply to violations of neutrality by Austrian subjects.

The imperial government have endeavored to supply this want in cases of war between other states, by promulgating in legal forms special regulations for the preservation of neutrality applicable only to the war in question. Thus, in the year 1854, in consequence of the war then existing, the ministerial *ordonnance* of May 25, 1854, was promulgated, of which copy is inclosed herewith.

In such special declarations the generally acknowledged principles of international law, as well as the known views of the belligerent powers on certain points, have been taken into consideration, in order, as much as possible, to obviate any complaints of infringement of neutrality.

There does not exist, however, a law of this kind applicable to all future occasions, and more particularly there are no general laws in Austria prohibiting the construction, equipment, or manning of ships (in Austrian harbors) which are destined for belligerent powers, or are suspected of being so.

The undersigned, &c., &c.,

(Signed) MEYSENBUG.

VIENNA, *May* 16, 1867.

Published on the 28th May, 1854.

Decree of the ministers of the interior, of the exterior, of justice and of trade, as well as of the commander-in-chief of the Army, of the 25th of May, 1854, by which are published the principles to be observed during the war which has broken out between England, France, and the Ottoman Empire on the one side, and Russia on the other side, by the imperial authorities and subjects with reference to trade and navigation.

In consequence of the war which has broken out between England, France, and the Ottoman Empire on the one side, and Russia on the other side, the following regulations are published with the consent of His Imperial Apostolic Majesty, given on the 23d May, 1854, according to which all imperial, civil, and military authorities, as well as all Austrian subjects, will have to regulate their conduct.

1. The acceptation or employment of *lettres de marque*, under whatever form or flag, as well as every kind, share in the command, manning of or fitting out of privateers, is prohibited to Austrian subjects. Whoever acts otherwise, has not only to expect no protection on the part of the imperial government, if he is subjected to the punishment in other states, but he shall also be treated according to the existing laws for robbery, as the acceptance of *lettres de marque* is to be considered as an attempt at robbery.

2. Should foreign privateers provided with *lettres de marque* from one of the belligerent powers present themselves, the entrance into our harbors is to be refused, except in case of imminent danger from storms, and then their earliest possible departure must be insisted on.

3. It is forbidden to ship under Austrian colors, to carry troops of the belligerent

states, or to import into those countries commodities which, according to the laws of nations, or other universally known regulations, are considered as contraband of war.

Of such commodities, an Austrian ship in intercourse with these states may only carry so much as is strictly necessary for its own use or defense.

Whoever infringes on this prohibition has no protection to expect from the Austrian government in case of legitimate seizure and confiscation on the part of the belligerent states, but will be punished besides.

4. Austrian ships are forbidden to enter into such places and harbors as are besieged by one of the belligerent powers, or blockaded by a sufficient force, as otherwise they would neither have to expect to enjoy the freedom of a neutral flag, nor assistance or interference on the part of the imperial government.

5. Except in this case, Austrian merchant-ships are not hindered, in spite of
[40] the existing war, in carrying on their trade and intercourse with the *harbors of the powers engaged in the war, and in like manner the merchant-ships of the belligerent states may as before enter without hinderance into all Austrian harbors, remain as long as they please, get repairs &c., &c., in so far as they observe the existing laws and regulations, and so long as their conduct is in accordance with the rules of neutrality.

With respect to the admission of foreign ships of war into Austrian harbors, the conditions of the decree of the ministry of war of the 29th January, 1850, remains in force.

6. On the expectation that the neutral Austrian trade will be properly respected by the belligerent powers, and that the customary privileges of belligerents will be exercised with a proper observance of the laws of nations, or of any modifications of them consonant with treaties, it is herewith decreed that Austrian navigators shall not oppose themselves to visitation on the open sea on the part of foreign ships of war, but, on the contrary, shall, without difficulty, show the papers and documents by which their neutral capacity is proved, throw none of them into the sea, or otherwise destroy them, nor keep on board false or duplicate and secret papers.

The belligerent powers have besides officially expressed the satisfactory declaration that the property of the enemy in neutral ships, and neutral property in the enemy's ships, with the exception of contraband of war and the enemy's dispatches, shall be respected and not taken.

7. The captures which the belligerent powers make from the enemy may only be admitted into the harbor of Trieste, (with the exception of every other Austrian harbor,) where the effects may be disembarked, deposited, administered, (in case they do not contain goods, the import of which into the imperial states is forbidden,) bought, or sold, or be exported anew in the course of trade, but all under the condition that the judicial decision shall have been given by the competent authority of the power which has taken the prize as to their legitimacy. Should some goods be exposed in the mean time to inquiry, these may be sold beforehand, but only on sufficient security for their value being given, in case the decision should declare the liberation of the ship.

8. Should an Austrian ship, in spite of its obedience to the above regulations, be treated in an improper manner, information is to be given without delay to the nearest Austrian consular or other imperial authority, in order that the imperial government may take steps to obtain compensation and satisfaction from the foreign state, and when steps have already been taken by the injured party to support them.

9. These regulations will be put in force from the day of their publication.

BELGIUM.

(Received from Her Majesty's legation at Brussels.)

(1.) Article 14 du titre IX de l'ordonnance sur la marine de 1861 :

Aucun vaisseau pris par capitaines ayant commission étrangère ne pourront demeurer plus de 24 heures dans nos ports et havres s'ils n'y sont retenus par des tempêtes (ou si la prise n'a été faite sur nos ennemis).

(2.) Article 84 du code pénal :

Quiconque aura, par des actions hostiles non-approuvées par le gouvernement, exposé l'état à une déclaration de guerre, sera puni de banissement, et, si la guerre s'en est suivie, de la déportation.

(3.) Article 85 du code pénal :

Quiconque aura, par des actes non-approuvées par le gouvernement, exposé des Belges à éprouver des représailles, sera puni de banissement.

(4.) Déclaration du 25 avril 1854, à l'occasion de la guerre de Crimée:

Le commerce est informé que des instructions ont été adressées aux autorités judiciaires, maritimes et militaires pour les prévenir que les corsaires portant pavillon quelconque, ou munis de lettres de marque, ou commissions quelconques, seuls ou avec

les bâtiments qu'ils auraient capturés, ne seront admis dans nos ports qu'en cas de danger imminent de mer; ces autorités sont en conséquence chargées de surveiller les corsaires et leurs prises, et de leurs faire reprendre la mer le plus vite possible.

Il a été prescrit aux mêmes autorités de ne reconnaître de valeur légale à une commission ou lettre de marque délivrée par les puissances belligérantes sans l'autorisation du roi.

Toute personne soumise aux lois du royaume qui ferait des armements en course, ou qui y prendrait part, s'exposerait donc d'un côté d'être traitée comme pirate à l'étranger, et de l'autre à être poursuivie devant les tribunaux belges, suivant toute la rigueur des lois.

(5.) Déclaration du 8 mai 1859, à l'occasion de la guerre d'Italie:

La Belgique a adhéré aux principes posés dans la déclaration du congrès de Paris du 16 avril 1856.

Le commerce est informé que des instructions ont été adressées à ce sujet aux autorités judiciaires, maritimes et militaires.

Toute personne soumise aux lois du royaume qui ferait des armements en course, ou qui y prendrait part, ou bien qui poserait des actes contraires aux devoirs de la neutralité, s'exposerait d'un côté à être traitée comme pirate à l'étranger, et de l'autre poursuivie devant les tribunaux belges, suivant toute la rigueur des lois.

(6.) Déclaration du 22 juin 1861, à l'occasion de la guerre d'Amérique, indentique à la déclaration du 8 mai 1859.

(7.) Déclaration du 11 juin 1865, à l'occasion de la guerre entre Brésil et le Paraguay, également identique.

(8.) Déclaration du 18 février 1866, à l'occasion de la guerre entre l'Espagne et le Chili, et celle du 14 mars 1866, à l'occasion de la guerre entre l'Espagne et le Pérou, également identiques.

DENMARK.

COPENHAGEN, *April* 30, 1867.

MY LORD: In pursuance of the instructions contained in your lordship's circular dispatch of the 14th of February, addressed to Sir Charles Murray, I have the honor to transmit herewith to your lordship copy of a note that has been addressed to me by Count Frys Frysenborg, transmitting copies of the Danish laws and regulations in vigor for the prevention of acts within Danish territories of which belligerents might complain as a violation of the duties of neutrality.

Inclosure No. 2 to this dispatch is a set of laws, with translation, dated May 4, 1803, for the guidance of merchants and shipmasters in time of war between maritime powers. In the 13th article are enumerated the goods that are to be considered as contraband of war.

[41] Very important special regulations are laid down in article 14, with a view to controlling the shipment of articles contraband of war, and to insuring their due delivery at neutral ports.

According to the eighteenth article, Danish owners and masters of merchant-vessels who infringe the law not only forfeit their right to Danish citizenship and the protection of their government in case of seizure by the enemy, but likewise expose themselves to prosecution by the tribunals of their country.

Various articles of the law of May 4, 1803, will be annulled by the provisions of a new law bearing date March 13, 1867, (copy of which, together with a translation, was transmitted to your lordship's office by Mr. Consul Bridges Taylor, in his dispatch of the 27th instant,) and which is to come into force in the month of October of the present year.

In it are defined the character of the ship's papers which all Danish merchant-ships will in future be required to possess in order to prove their nationality.

They will consist of a certificate of registry, the articles of agreement, custom-house clearance, charter-party, and bills of lading.

The ancient Latin passports are abolished.

By a set of regulations embodied in an ancient circular of the royal Danish chancellerie, dated May 20, 1823, (inclosure No. 4 in this dispatch, with translation,) privateers are forbidden to enter Danish ports, except on account of stress of weather or pursuit by an enemy. They are bound, however, to quit their place of refuge so soon as the danger be past.

An injunction is likewise laid on foreign vessels of war, as well as privateers, from sending their prizes to, or selling them or their cargoes in Danish ports, and Danish subjects are strictly forbidden to purchase any prize brought into Danish ports.

The sixth inclosure to this dispatch is copy of a circular, together with translation, which was addressed, during the Crimean war, to the commanders of vessels stationed in Danish waters, and points out the course they were directed to pursue in order to

maintain the neutrality of Danish territory, and to prevent the commission of any act that might give umbrage to either of the belligerents at that time engaged in hostilities.

I have likewise the honor to inclose herewith to your lordship copy of the seventy-sixth article of the Danish penal code of February 10, 1866, fixing the penalties to be inflicted on persons who, without royal authorization, should enlist soldiers in Denmark to serve in a foreign war.

I have the honor to be, with the highest respect, my lord, your lordship's most obedient humble servant,

FRANCIS CLARE FORD.

The LORD STANLEY, M. P., *&c.*, *&c.*, *&c.*

COPENHAGUE, *le* 26 *avril* 1867.

MONSIEUR: Après m'être concerté avec les ministres compétents sur la teneur de la note que sir Charles Murray m'a adressée en date du 19 février de l'année courante, au sujet des dispositions de loi destinées à prévenir sur le territoire danois des actes dans lesquels, en cas de guerre entre des puissances étrangères, celles-ci pourraient voir une violation des devoirs d'un état neutre, j'ai l'honneur des vous faire parvenir sous ce pli:

I. Un exemplaire de l'ordonnance du 4 mai 1803, contenant les règles que les armateurs et capitaines de navires ont à observer pendant une guerre maritime à laquelle le Danemarck ne prendrait point part.

II. La copie d'une circulaire de la ci-devant chancellerie royale danoise en date du 20 mai 1823, indiquant les conditions auxquelles les vaisseaux de guerre et les corsaires des puissances belligérantes pourraient entrer dans les ports danois pendant une guerre dans laquelle le Danemarck ne serait pas engagé.

III. Une circulaire qui, pendant la dernière guerre d'orient, a été adressée aux chefs des vaisseaux de la marine royale ayant station dans les parages danois, et qui leur prescrivit la ligne de conduite que, conformément à la législation du pays, ils avaient à suivre pour maintenir la neutralite du territoire danois et empêcher des actes de nature à donner ombrage à l'une ou l'autre des puissances belligérantes.

IV. La traduction française de l'article 76 du code pénal du 10 février 1866, qui indique les peines encourues par les personnes qui, sans la permission du roi, recruteraient des soldats sur le territoire danois pour le service militaire d'une puissance étrangère.

En appelant votre attention sur la teneur de ces ordonnances et publications je crois devoir vous donner une courte analyse des principales dispositions de l'ordonnance du 4 mai 1803.

Les articles I. à XIII. contiennent des prescriptions détaillées sur les papiers de bord, dont, en cas de guerre maritime entre des états étrangers, les navires de commerce danois doivent être munis pour constater leur nationalité. À l'egard des ces prescriptions je dois, toutefois, vous faire observer que la présence, à bord des navires marchands, de passeports latins n'étant pas exigée par les traités entre le Danemarck et la Grande-Bretagne (voir la note de Lord Russell au ministre du roi à Londres, en date du 29 juin 1861) le gouvernement a dispensé les armateurs danois de l'observation des articles de l'ordonnance du 4 mai 1803, qui ont trait à les passeports. Aussi par une nouvelle loi du 13 mars de l'année courante, dont je joins ici un exemplaire, plusieurs de ces mêmes articles ont été abolis ou modifiés; l'article 2 de la loi du 13 mars ne demandant comme preuve de la nationalité d'un navire de commerce que le document dit "certificat de nationalité ou d'enregistrement" qui constate que le navire a été porté sur le registre des bâtiments qui sont en possession du droit de naviguer sous pavillon danois.

À l'exception de ce document tout navire enregistré n'est tenu, d'après ce même article, d'avoir à bord, soit en temps de guerre, soit en temps de paix, que le rôle d'équipage, le certificat d'expédition de douane, et les papiers relatifs à la cargaison.

Afin de prévenir l'abus du pavillon danois à couvrir des articles de contrebande de guerre, l'article XIII. de l'ordonnance du 4 mai 1803 donne une énumération des objets qui doivent être considérés comme appartenant à cette catégorie, lorsqu'ils sont destinés aux puissances belligérantes ou à leurs sujets.

Par l'article XIV. il est interdit aux capitaines de commerce de transporter dans leurs navires les articles de contrebande mentionnés dans l'article précédent, à moins qu'il ne soit dûment constaté qu'ils sont destinés à être importés dans un port neutre. Si tel est le cas l'armateur et le capitaine du navire, au moyen duquel le transport des marchandise se fait, sont obligés à observer les formalités que précise le même article pour qu'il soit démontré que les marchandises ont été réellement importées dans le port neutre.

L'article XV. enjoint aux capitaines des navires de commerce de respecter les publications du gouvernement du roi relatives à la notification qui lui a été faite du blocus d'un port d'une des puissances belligérantes. Si les capitaines n'ont pas eu connaissance du blocus par des publications de cette nature et qu'ils se soient approchés du

port bloqué, l'article XV. les invite à se conformer également aux avis que les chefs des vaisseaux de blocus leur en donneraient sur les lieux mêmes.

Je me permettrai encore d'ajouter que, d'après l'article XVIII. de l'ordonnance dont il s'agit, les armateurs et les capitaines de navire qui contreviendraient aux dispositions de cette loi sont nonseulement privés du droit de réclamer la protection du gouvernement du roi contre les mesures coercitive que les puissances belligérantes pourraient prendre vis-à-vis d'eux, mais ils peuvent, en outre, être condamnés par les tribunaux du pays à des peines plus ou moins graves, selon la nature des contraventions qui leur sont imputées.

[42] Espérant que les observations que je viens de vous *présenter satisferont à la demande qui m'a été faite, je profite de cette occasion, &c., &c., &c.,

(Signed) FRYS FRYSENBORG.

À Monsieur FORD,

Chargé d'affaires de sa majesté britannique.

Rules for the guidance of merchants and ship-masters in time of hostilities between maritime powers.

We, Christian VII. by Grace of God King of Denmark and Norway, the Goths and Vandals, Duke of Sleswig, Holstein, Stormarn, Ditmarch, and Oldenburg:

Make known, although we, by several previous resolutions, fixed the rules according to which our traders and seafaring subjects should be guided when war broke out between foreign maritime powers, we have, nevertheless, found it necessary under the present circumstances to make one condensed enactment, embodying those parts of these former resolutions, that they may hereafter serve as a rule of guidance for these our subjects, and become publicly known; and also so that no Danish subject shall plead ignorance of his duties in these respects, it is our gracious will that the following enactments hereafter shall alone be followed and accurately conformed to by all and every one who wishes to share in the advantages which our neutral flag in time of war will give to their lawful trading and maritime speculations; and to this end we hereby annul and declare void all our former enactments. We order and command as follows:

ARTICLE I. Those our trading and seafaring subjects who wish to send any of their ships to sea to any foreign places to which the effects of the war have or may reach, shall be bound (always in conformity with the rules and regulations laid down in the following law) to acquire a royal Latin sea-pass or permit, as well as the other ship's documents and papers exacted by law. To this end, on the breaking out of hostilities between foreign powers, it will be necessary to decide and make known for what places it is considered necessary that ships should be provided with our Latin sea-pass.

ARTICLE II. The pass cannot be obtained before the owner of the ship for which it is required has provided himself with the necessary ship's certificate in proof of his lawful right of ownership.

ARTICLE III. No one can obtain a ship's certificate who is not our subject, either by birth in our kingdoms and countries, or who, before the breaking out of hostilities between any of the maritime powers of Europe, was in full possession of the rights of citizenship, either in our or other neutral states. In all cases the owner of a ship for which a certificate is demanded shall be domiciled in some place in our kingdoms and countries.

ARTICLE IV. He who, according to the foregoing articles, is entitled to obtain or claim a ship's certificate, shall, in order to receive the same, present himself to the magistrate or authorities of the city or place to which the ship belongs, or where the principal number of its owners are domiciled, where either they, or at least the chief owner, has, in person or by means of a written and signed oath, declared that the ship belongs to him, or to one or more of our subjects, and that the ship for which the certificate is demanded has no contraband of war on board destined for the use of the belligerent powers or their subjects.

ARTICLE V. No one, on the breaking out of hostilities, shall be permitted to command a ship provided with our royal sea-pass who may have been born in any of the countries of the belligerent powers, unless he, before the breaking out of hostilities, shall have acquired rights of citizenship in our kingdoms and countries.

ARTICLE VI. Every ship-master who will command a ship furnished with our royal Latin sea-pass must have acquired citizenship at some place in our kingdoms and countries.

He is bound constantly to have his letter of citizenship with him on board. As a security that he undertakes nothing that may be in contradiction with the provisions of this our enactment, he shall be bound, before departure from the harbor where he receives the pass, to take an oath that nothing with his will shall be undertaken whereby the pass and certificate given to him shall be misapplied.

Such oath made by the master shall accompany the owner's application for the delivery of the permit. But when, on account of the absence of the ship's master, this cannot be accomplished, the owner shall state the fact, and then our consul or commercial agent in the district where the master happens to be shall be answerable that when the master receives the permit he shall take the required oath.

ARTICLE VII. On ships which are to be furnished with the royal Latin sea-pass, no supercargo, factors, clerks, or other ship's officials who are subjects of the belligerents shall be permitted on board.

ARTICLE VIII. Half the crew, including the mate, shall consist of the subjects of our kingdoms and countries. Should it happen that a crew in a foreign country, through desertion, death, or sickness, become incomplete, so that it is impossible for the master to comply with this enactment, he shall be permitted to engage as many foreigners (especially subjects of neutrals) as may be required to continue the voyage; however, in no case shall the number of the subjects of the belligerents who may be on board the ship exceed a third part of the crew.

Every change connected with such alterations in the crew, together with the reasons calling for them, shall be carefully entered by the captain on the ship's articles, which shall be attested each time and signed by our consul or commercial agent, or by their deputies resident in the ports the ship may put into, and such indorsement shall serve as a justification for the master in all subsequent contingencies.

ARTICLE IX. Beside the ship's certificates mentioned in Article II, the following ship's documents shall always be found on board the ship:

The ship-builder's certificate, and inasmuch as he who built the ship may later have sold it to another, then also the bill of sale or title deed shall be present.

The documents, on application for the delivery of the pass, shall be sent by the owner to the proper authorities, accompanied by the certificate, in proof of the ship's lawful right to claim the certificate.

The royal Latin sea-pass, with the accompanying translation.

Measure bill, or certificate of measurement.

Articles of agreement and list of the crew, which must be properly attested by the competent authorities.

Charter-parties and bills of lading of the cargo; and, lastly,

Custom-house clearance from the place where the cargo was taken in.

ARTICLE X. The measure bill shall be delivered by the authorities of our kingdoms and countries properly authorized to measure ships. In case any of our subjects purchase a ship in a foreign port, our consul or commercial agent at the place shall be authorized to have the ship measured, and thereafter deliver to the master of the ship a provisional measure bill, which shall be considered valid until the ship arrives in one of our harbors where the ship can be properly measured and branded, and a permanent measure bill be made out, which shall remain with the ship.

ARTICLE XI. It is forbidden to all and every one, owners as well as ship-masters, to procure for themselves and to have on board duplicate ship's papers, or to carry a foreign flag as long as they are sailing with papers and documents graciously given by us.

ARTICLE XII. Our royal Latin sea-pass is only valid for one journey, *i. e.*, from the time the ship after receiving it quits its home port and until the time it returns to it; unless the ship in the mean time by lawful sale has been transferred to another party, in which case the new owner must obtain the necessary passes and documents in his own name.

[43] *ARTICLE XIII. According to ordinary received principles, the subjects of neutral powers cannot be permitted to have goods on board which can be considered as contraband of war when they are destined for the belligerent powers or their subjects, or already belong to them; so have we, the King, in order to prevent our flag being misused to cover or protect such carrying of contraband articles, and in order that no one in this respect shall excuse himself on the ground of ignorance, hereby and expressly decided what should be classed under the denomination of contraband of war. Hereafter the following articles and goods of all and every one our subjects shall be considered as contraband of war: Cannons, mortars, all kinds of weapons, pistols, bombs, grenades, cannon balls, and bullet guns, flint stones, fusees and tinder, gunpowder, saltpeter, sulphur, cutlasses, pikes, swords, fittings, cartouche-boxes, saddles, and bridles; however, with the exception of such quantities of these articles as may be requisite for the protection of the ship or of its crew.

Besides one must in every respect conform to all special stipulations or positive contracts which we, the King, have agreed to with foreign powers in relation to the carrying of prohibited goods and properties in our subjects' ships, in which case the owner on receiving the pass will be furnished with special instructions for his guidance.

ARTICLE XIV. Should a ship bound for a foreign port take in such goods which, if they were destined for any of the harbors or ports of the belligerent powers, would be considered as contraband of war, in addition to the oath which the owner and ship-master would have to take before the proper magistrate or authority, the persons who load such ships and the master shall also be bound, in conformity with the invoice of

the cargo or bills of lading, to draw up besides the ordinarily required custom clearance, a special declaration which shall contain a classification of the merchandise in question, with their qualities and value, which declaration, signed by the shipper and master, shall be certified by the custom-house authorities at the place where the clearance is given.

The declaration thus attested shall without delay after the clearance of the ship be sent by our custom officials to the chief commissioners of customs, and shall serve to control the correct arrival of the specified goods at their specified destination, provided they have not been lost by accident at sea or by capture. The control shall be carried out in the following manner: The shipper of the goods in question shall procure a certificate from our consul or commercial agent at the place to which the ship is bound, or when we have no consular or commercial agent there, a certificate from the lawfully authorized local authorities certifying the due arrival and discharge of the merchandise in conformity with the declaration. This certificate shall be procured and sent in to the home-office as soon as the ship arrives at its destination or reaches some home port.

Should the certificate not be forthcoming in a reasonable time proportionate to the length of the journey, our home-office shall demand a declaration from the shipper to the effect that he declares on oath that he has received no information about the goods or the ship. Should the arrival of the ship and the discharge of the goods in question in a neutral port not be clearly proved, and no accident or violent capture have taken place to prevent the arrival and discharge, the shipper shall pay to the treasury a fine of 20 rix dollars for every commercial last of the ship's burden; besides both owner and master shall be liable to an action at law.

ARTICLE XV. No shipmaster shall sail to any port blockaded from the sea side by one of the belligerent powers, and he shall in every respect carefully pay attention and conform to the warnings communicated to him by the authorities relative to the blockade of ports. In case he, on sailing into any port, (the blockade of which has not previously been brought to his knowledge,) meets any ship carrying a flag of war of any of the belligerent powers, and it is notified to him by the commanders that the port is really blockaded, he shall immediately retire from it without in any way seeking clandestinely to break the blockade.

ARTICLE XVI. None of our subjects shall take service on board privateers, much less themselves arm or be interested in the arming of such ships; neither shall any owner or shipmaster allow his ship to be used for the transport of troops, weapons, or contraband of war, of whatsoever description. Should any ship-master be unable to prevent his ship (through irresistible force) being misused as abovementioned, it shall notwithstanding be his duty to protest, and with all his power and by a formal act, against such violent proceeding which he has been unable to obviate.

ARTICLE XVII. When a merchantman, not sailing under convoy, is spoken with at sea by any armed vessel belonging to the belligerent powers who have the right of visitation, the ship-master shall not oppose such visitation, if effected by the commander of such above-mentioned armed ship, but is bound on the contrary faithfully and without reserve to show all the documents appertaining to ship and cargo. Both the ship-master, his officers and crew, are strictly forbidden to throw overboard or in any other way to destroy or conceal any documents or papers on board belonging to the ship or cargo, either before the visitation or while it takes place. When the protection of our flag of war is granted to merchandise, every ship-master, before he is taken under convoy, shall exhibit his ship's papers to the chief of the convoy, and in every case most carefully conform to his orders.

ARTICLE XVIII. Should any one, be he owner or master, act in contravention to these enactments, he shall lose his citizenship and the right to own or command ships; moreover, he shall be prosecuted according to law, and according to circumstances be punished either for perjury or for having infringed our royal mandates. On the other hand, we will cause to be respected and protect the lawful enterprises by land and sea of our faithful subjects, so long as they conform to the foregoing rules and regulations, to which end we have enjoined and ordered all our ministers and consuls, and other authorities in foreign parts to endeavor to their utmost to ward off and prevent any inconvenience or violence being suffered by our subjects, and in case such should have occurred then to aid the injured parties and endeavor to assist them to obtain justice and compensation. Likewise we, the King, will at all times graciously give our support to every just complaint which our subjects in the above respects may feel themselves called upon to lay before us.

Given at our royal palace at Copenhagen, May 4, 1803, under our royal hand and seal.

CHRISTIAN R.

Royal Danish chancellerie's resolutions of May 20, 1823.

The royal department of foreign affairs has announced to this chancery that, under date of the 30th of last month, it has pleased His Majesty the King graciously to resolve that it shall not be allowed to any privateer, of whatever nation, to remain in any Danish harbors or waters.

Only in case that such privateers, forced by pressing danger of storms, bad weather, or that pursuit by the enemy occasion dangers, seek refuge in a Danish port, then they shall be received and receive such help as humanity may dictate, but they shall be bound immediately the danger is over to put to sea again. Neither shall any privateer be permitted to send his prizes to Denmark, or to sell them there: and in the last-mentioned case, when privateers, forced by necessity, seek refuge in Danish ports, they shall neither unload nor load prizes they may bring with them, neither shall they sell these or their cargoes or any part of them in Danish harbors.

[44] *To this end it shall by public notice be stringently forbidden to all His Majesty's subjects to buy foreign privateers' prizes. When foreign men-of-war run into Danish harbors they may be obliged to bring the prizes they may have taken with them, and shall neither unload nor load them or sell them, wholly or partly, them or their cargoes.

In communicating this royal resolution, we will beg you kindly to communicate its contents to all the officials within your jurisdiction, that they may take cognizance of the same, and make known to all and every one that they are stringently forbidden to purchase prizes brought in by foreign privateers.

Certified by the expediting secretary in the ministry of justice, March 26, 1867.

Instructions for the guidance of commanders of Danish ships of war during the Crimean war.

1. At the station at which you are placed it is your duty, with the ship under your command, in the best manner to preserve good order on the coast and in the roads and harbors, to take measures that trade and navigation is carried on in its usual uninterrupted manner, without suffering molestations from the men-of-war who may be on the spot.

It is desirable that foreign men-of-war should always find Danish men-of-war in their neighborhood, whenever they appear in our waters, and you will, therefore, as soon as you ascertain that foreign ships of war are in the waters of your station, approach them and follow their movements. The ship under your command should properly be considered as a guard-ship in the station, for which reason you will also, when at anchor, fire off watch signals, &c.

2. You must show foreign men-of-war, of whatever nation they may be, with which you may come in contact, all possible attention and politeness, but you must abstain in every manner from giving them assistance, except such as humanity may call for, especially you must not assist them in their navigation, by procuring for them local pilots, or by other nautical assistance.

3. In cases where foreign men-of-war have communication with land, you will give over the keeping of order on shore to the proper police authorities or harbor officials, but you shall in word and deed render assistance everywhere where it may be required, and where conflicts may arise either by reason of misunderstandings, want of knowledge of the language, on the part of the one side or of the other, or on account of possibly exaggerated claims on the part of the foreign ships. You shall in these cases come forward as mediator to clear up matters, and indeed act as a reconciliator, but be at the same decided and serious everywhere, where the question is to keep up or make good the right of the King's subjects and the neutrality of the Danish territory.

4. The Danish territory extends one Danish mile from the *terra firma* of the King's country, (see the circular from the ministry of August'18, 1810;) excepted herefrom, however, is the Sound at Kronborg and the Elbe at Glückstadt, where Danish territory only stretches a cannon shot from land, or 3,000 ells.

Danish mile = 5 English miles, 2,000 yards.

5. It is the will of His Majesty the King that the ships of all nations shall be under the protection of Denmark when in Danish territory, and within its territorial limits, within which the Danish neutral rights must be maintained, so that the bringing up or visiting of ships, be they belligerent, neutral, or national, shall not be permitted within these territorial limits.

6. The bringing of prizes into Danish ports is forbidden. When prizes are anchored in open roads or off the coast of the Danish territory, it must be supposed that this occurs only from the force of circumstances; but you shall then request the bringer up or prize-master to take away the prize as soon as possible, and you must watch with

care that nothing is sold or brought on shore or landed from the prize while it remains in Danish waters or territories.

The necessary warning in this respect shall be given in these cases as soon as possible to the proper authorities on shore.

7. If a ship of war or merchantman flying before an enemy seeks refuge in Danish territory, it is your duty to take it under your protection. It is to be hoped that a warning to the pursuing man-of-war (preferably by sending a boat with an officer on board, or, if necessary, by a warning signal) will be sufficient to ward off such a breach of neutrality; but should, contrary to expectation, a seizure or bringing up take place in Danish territory, you have then only, by a protest framed in a decided but serious and polite tone, to make known to the commander of the foreign man-of-war that he has committed a breach of Danish neutrality and territorial rights.

You will thereupon, as soon as possible, report to your government what has taken place, and send a copy of the protest, together with a statement of the name of the ship and its commander, &c., &c.

8. When foreign ships of war wish to run into harbors within the limits of your station, you will watch that the ship conforms to the rules of the harbor, both as regards the local or general regulations, such, for instance, as discharging of gunpowder, putting out fires, &c., &c.

9. Privateers shall not be suffered within Danish territories, and still less shall they be permitted to run into any Danish harbor except in case of distress. It must then be stringently looked to that they deliver up gunpowder and weapons, and in every case conform to the police regulations of the harbor. Their stay in harbor shall not be suffered longer than absolutely necessary for their repairs.

If privateers should bring prizes into Danish territory, they shall be immediately sent back.

Privateers, on refusing to comply with these orders in Danish territory, necessary force shall be employed to enforce compliance; but you must, before you have recourse to force, carefully convince yourself that the vessel in question is really a privateer and not a man-of-war, and if you consider it necessary you may, for this purpose, demand to see the commander's commission or patent.

10. Outside of the Danish territory the sea must be considered as open water, on which account you will look upon every act of belligerent ships taking place outside of our territories as not concerning you.

Should, however, foreign men-of-war, in open waters, but within sight of you, overhaul Danish merchantmen, you must try and obtain permission for such vessels to proceed on their course, but in these cases you can only come forward as mediator. If the foreign inspecting man-of-war declares it to be his duty to bring up such vessel and that this takes place on account of the ship being loaded with contraband of war bound for one of the belligerent's harbors, you cannot oppose it, but can only, as soon as possible, report the case to the proper government department. Should, contrary to expectation, a foreign man-of-war in your vicinity attempt to molest a Danish merchantman, for instance, by taking his crew, merchandise, provisions, or ship's space, or by attempting forcibly to take possession of the ship for his own purposes, such as the transport of sick or of booty, you must declare that as you consider yourself bound to protect your countrymen's liberty and right to unhindered sailing on the sea, (a right which can only be limited by those general hinderances applying to all nations' ships in time of war,) it is your duty, on behalf of Danish vessels, seriously and earnestly to protest against every act which exceeds these limits.

Should this remonstrance not be attended to, you will at once make a formal protest against the proceedings of such foreign man-of-war, in which protest you will, besides giving notice that you consider that his mode of procedure is unauthorized, and
[45] a breach *of Denmark's recognized neutrality, hold him responsible for the consequences of such an act. In every case the master or owner of the merchantman shall receive full compensation and indemnity for the loss of property or time occasioned thereby. You will protect Danish trade everywhere, and in every case against privateers, and, if necessary, use force.

The object of these present instructions is to give you decided rules for your guidance in certain cases; but the department has likewise hereby intended to give you a clew for action in all possible unforeseen contingencies, in which it will be your duty to act with tact and care, together with gravity and decision. As a rule for such unforeseen cases, the department advises you the strictest neutrality, by abstaining from any sign of partiality for either one or the other of the belligerents, be it either by word or deed. You must take care to have respected the Danish neutrality rights and the keeping of good order within the territories, showing every external sign of politeness and consideration in conformity with what the usages of ships of war require or call for.

Traduction du § 76 du code pénal civil du 10 février 1866.

Celui qui, sans y être autorisé par le roi, entreprendrait de recruter des hommes pour servir dans une armée étrangère est puni de travaux forcés jusqu'à 6 ans, si le roy-

aume est engagé dans une guerre ; et, si tel n'est pas le cas, d'une peine pouvant aller depuis deux mois de simple réclusion jusqu'à 2 ans de travaux forcés.

Le sujet qui, sans la permission du roi, s'engagerait en temps de guerre au service d'une puissance étrangère n'étant pas en guerre avec le Danemarck est possible de prison, ou, suivant la nature du cas, de travaux forcés jusqu'à l'année.

L'acte de recrutement est accompli depuis le moment où un individu est accepté pour le service étranger.

FRANCE.—No. 1.

(Received from Her Majesty's embassy at Paris.)

Report from M. Treitt, counsel to the embassy.

À l'honorable Monsieur JULIAN FANE, *Ministre de S. M. B. à Paris :*

MONSIEUR LE MINISTRE : Par votre lettre du 16 février 1867, vous avez bien voulu me demander quels sont les lois, règlements, et autres moyens dont est armé le gouvernement français pour empêcher en ses possessions les actes dont des belligérants pourraient se plaindre comme d'une violation des droits et devoirs de la neutralité.

Je m'empresse de vous répondre que les seuls textes applicables à la matière sont les articles 84 et 85 du code pénal, ainsi conçus :

"ART. 84. Quiconque aura, par des actions hostiles non-approuvées par le gouvernement, exposé l'état à une déclaration de guerre, sera puni du bannissement, et, si la guerre s'en est suivie, de la déportation.

"ART. 85. Quiconque aura, par des actes non-approuvées par le gouvernement, exposé des Français à éprouver des représailles, sera puni du bannissement."

Vous voudrez bien remarquer la généralité de ces expressions, *quiconque, actions hostiles ;* le législateur n'a pas voulu définir ce qu'il faillait entendre par *actions hostiles,* il en a laissée *l'appréciation souveraine aux juges.*

Il ne s'agit point dans les articles 84 et 85 du code pénal, des machinations et manœuvres au profit d'une puissance étrangère, et ayant pour objet de provoquer des hostilités. Ces machinations pratiquées dans une intention et un but criminels, rentrent dans les différentes espèces de trahison, lesquelles sont punies par les articles 76 à 83 du même code. Les articles 84 et 85 s'appliquent aux simples cas d'imprudence, de témérité, de négligence ; c'est moins l'intention que le fait matériel qui est puni. La loi ne voit que *le résultat*; ainsi : "La France a-t-elle été exposée à une déclaration de guerre, la guerre a-t-elle été déclarée? Les Français ont-ils été exposés à des représailles ?" Ces seules questions résolues affirmativement entraineront l'application d'une des peines si sévères prononcées par la loi et, en outre, le paiement de dommages-intérêts qui peuvent toujours être réclamés.

La gravité des circonstances le veut ainsi : même l'on avait proposé la peine de mort. Mais le législateur a pensé que la peine de la déportation suffisait pour exciter la prudence des citoyens dans leurs actes qui peuvent toucher à de bel ligérants (séance du conseil d'état du 9 janvier 1810).

Il faut donc trois conditions pourqu'il y ait lieu à l'application des articles 84 et 85 du code pénal :

1°. Que l'action soit hostile.

2°. Que l'action n'ait pas été approuvée par le gouvernement.

3°. Que la France a été exposée à une déclaration de guerre ou des Français exposés à des représailles.

Je précise ces trois circonstances parceque c'est le pouvoir judiciare seul qui est appelé à les résoudre et à décider de la culpabilité.

Si les juges décident que telle action n'est point une action hostile, et par conséquent non-violatrice de la neutralité, le gouvernement devra respecter cette décision et pourra l'opposer au belligérant qui se plaindrait.

Si, devant les juges, l'accusé excipait d'une approbation, soit tacite, soit expresse par le gouvernement, l'action incriminée ne pourrait plus être punie.

Enfin, si l'action hostile n'avait pas pour conséquence des représailles, ou une eventualité de guerre, elle cesse d'être criminelle.

Comme on les voit ces articles dégagent beaucoup la responsabilité du gouvernement vis-à-vis d'un belligérant. Ils ont pour but, comme l'a dit un illustre magistrat, de sauvegarder la moralité et la dignité nationale. Dans l'antiquité on livrait les coupables, ou prétendus coupables, et on les abandonnait à la vengeance de la partie plaignante ; adjourd'hui il n'en peut plus être ainsi, mais on a cherché des moyens pour donner satisfaction aux plaintes. C'est là que se trouve le principe des articles 84 et 85,

car si ces articles n'existaient point on ne pourrait faire droit à de légitimes réclamations et il n'y aurait jamais que la guerre comme dernier argument.

Il n'y a que trois exemples marquants dans les annales de la jurisprudence, de poursuites exercées en vertu des articles 84 et 85 du code pénal.

En 1824 un capitaine français commandant un navire colombien avait enlevé un navire sarde et exposé les Français à des représailles.

En 1831 des individus habitant la frontière sont allés attaquer un poste des douanes sardes.

En 1834 des banquiers ont fait un emprunt et des fournitures d'équipement te de munitions au profit de Don Carlos engagé dans une guerre civile contre le gouvernement espagnol.

Il ne faut pas s'étonner si ces cas sont si rares, les actes violateurs de la neutralité consistent généralement dans les livraisons d'engins et d'instruments de guerre. Or, en France, les poudres et les armes de guerre ne jouissent point de la liberté commerciale et industrielle du droit commun, ces deux objets sont sous la surveillance rigoureuse du gouvernement, et il est fort difficile que l'on puisse armer des navires, ou bien faire voyager ou effectuer des dépôts de poudre et d'armes de guerre sans que le gouvernement ne soit averti et ne puisse les empêcher.

Il n'y a donc que les articles 84 et 85 qui puissent prévenir les violations de la neutralité, j'ai parcouru tout l'arsenal de nos lois ainsi que les auteurs qui ont traité de cette question; j'ai examiné les lois concernant les prises maritimes, la piraterie et la traite des nègres, je n'ai rien trouvé concernant votre question, laquelle n'a trait qu'au droit privatif français relatif aux violations de la neutralité sur le territoire de la France et qu'il ne faut pas confondre avec les règles générales ou du droit des gens concernant la neutralité.

[46] *A ce sujet il a été dit avec raison que souvent un fait grave d'hostilité n'amènera pas la guerre quand les deux pays seront en bonnes relations, mais que souvent aussi le fait le plus simple peut apporter les plus sérieuses complications quand il y a des sentimens hostiles d'une part ou d'autre.

C'est donc par le résultat des actions incriminées que l'on applique les articles 84 et 85; cela est contraire aux notions ordinaires du droit pénal, car on dit communément que l'intention seule constitute le crime.

D'autres nations ont des dispositions analogues dans leurs lois pénales, l'article 136 du code prussien punit les nationaux qui exposent leur compatriotes à des représailles, et l'article 37 du code du Brésil punit d'un emprisonnement d'une à douze années celui qui compromet la paix de l'état et expose les Brésiliens à des représailles en dehors des cas de trahison qui sont, comme dans la loi française, punis des peines les plus fortes.

Agréez,
(Signé) TREITT.

PARIS, *le 20 février* 1867.

A l'honorable M. JULIAN FANE,
ministre plénipotentiaire de S. M. B.:

MONSIEUR le MINISTRE: Conformément à votre lettre d'hier soir, je m'empresse de vous addresser le texte des lois visées dans la déclaration de neutralité du gouvernement français du 10 juin 1861.

Je ne vous les avais point données dans mon avis du 20 février dernier, parceque, sauf l'ordonnance sur la marine de 1861, ils ne touchent pas directement les violation de la loi de neutralité; et puis je tenais a être court afin d'être lu et compris. Ce sont là les motifs qui m'ont déterminé à ne citer que les articles 84 et 85 du code pénal dont les termes généraux comprennent tous les cas de violation de la neutralité.

Je n'avais pas à citer non plus la déclaration de neutralité du 10 juin 1861, le gouvernement français a dû la notifier officieusement au gouvernement de la reine.

Quant aux faits relatifs à l'Olinde, au Rappahannock, et autres corsaires du sud, ces faits avaient été l'objet de communications assez nombreuses avec Lord Cowley; la presse les avait d'ailleurs signalés et je pensais qu'ils étaient, parfaitement connus au *foreign office.*

Je vais faire des recherches pour savoir ce qui est advenu de chacun des corsaires signalés en France soit à l'état de construction seulement, soit à l'état naviguant et combattant, ou pillant.

Dès que j'aurai pu recueiller mes renseignements, je m'empresserai de vous les transmettre; mais dès à présent je crois pouvoir vous dire qu'aucune de ces affaires de corsaires du sud n'a été l'objet d'un débat retentissant et que toutes ont disparu de l'attention publique sans le moindre bruit.

La déclaration de neutralité de la France du 10 juin 1861, admet encore les corsaires pendant vingt-quatre heures dans les ports français. Plusieurs puissances neutres ont été plus loin; elles on déclaré, dès l'année 1854, à l'occasion de la guerre de Crimée,

quelles ne recevraient dans leurs ports les corsaires belligérants que dans le cas d'absolue nécessité.[1]

Il y a là un progrès de la civilisation en attendant l'abolition universelle de la course.

Agréez, monsieur le ministre, mon entier dévouement.

TREITT.

FRANCE.—No. II.

(Received from Her Majesty's embassy at Paris.)

M. de Moustier, minister for foreign affairs, to Mr. Fane.

PARIS, le 26 *février* 1867.

MONSIEUR: Par votre lettre du 16 de ce mois, vous me priez de vous faire connaître les lois et les règlements qui existent en France au point de vue des actes que les belligérants peuvent considérer comme une violation des devoirs de la neutralité, la commission nommée par la reine pour l'examen des lois de neutralité désirant d'obtenir des informations à ce sujet, je m'empresse de répondre à cette communication.

A proprement parler, il n'y a pas de disposition dans la législation française qui marque d'une manière précise les limites de la neutralité à observer entre deux puissances étrangères qui sont en état de guerre, les questions de cette nature étant d'un caractère mixte et trouvant leur solution dans les principes généraux du droit international.

Il y a cependant dans le code pénal français deux dispositions qu'on peut invoquer comme se référant à la neutralité: ce sont les articles 84 et 85 qui punissent les actes commis par des individus qui exposeraient l'état à une déclaration de guerre, ou les Français à éprouver des représailles.

L'article 21 du code Napoléon interdit aussi à tout Français de prendre du service à l'étranger sans autorisation.

A un point de vue plus spécial on peut citer: l'article 3 de la loi du 10 avril 1825, qui punit comme pirate le Français qui prend commission d'une puissance étrangère pour commander un navire armé en course;

L'article 67 du décret disciplinaire sur la marine marchande du 24 mars 1852, qui interdit au marin français de prendre du service sans autorisation sur un navire étranger;

Certains paragraphes des articles 313, 314, et 315 du code de justice militaire pour l'armée de mer relatifs à la désertion à l'étranger;

L'ordonnance du 12 juillet 1847, et la loi du 14 juillet 1860, sur les armes de guerre;

L'article 2 de la loi du 16 mai 1863 qui prohibe la sortie des munitions de guerre.

J'ai l'honneur de vous transmettre ci-joint le texte des dispositions sus-mentionées.

Agréez, &c.,

(Sd.) MOUSTIER.

M. JULIEN FANE.

No. 13715.—*Ordonnance du roi concernant la fabrication ou la confection des armes et munitions de guerre pour l'usage des navires de commerce.*

A NEUILLY, *le* 12 *juillet* 1847.

Louis-Philippe, roi des Français, à tous présents et à venir, salut:

Vu les lois des 22 août 1791, 4 germinal an II., 19 thermidor an IV., 24 mai 1834, et 6 mai 1841;

Notre conseil d'état entendu;

Sur le rapport de notre ministre secrétaire d'état au département de la marine et des colonies;

Nous avons ordonné et ordonnons ce qui suit:

Art. 1er. Conformément à l'article 3 de la loi du 24 mai 1834, tout individu qui voudra fabriquer ou confectionner des armes de guerre, pour l'usage des navires de commerce, devra en obtenir préalablement l'autorisation de notre ministre secrétaire d'état au département de la guerre quant aux armes portatives, et de notre ministre secrétaire d'état département de la marine et des colonies quant aux bouches à feu et aux munitions.

La demande en autorisation énoncera le nombre ou la quantité, l'espèce, et le calibre

[1] Ordonnance du sénat de Hambourg du 26 avril 1854; ordonnance du sénat de Lubeck du 28 avril 1854; de Lubeck à la même date; du gouvernement d'Oldenbourg du 20 avril 1854; du roi de Suède 8 avril; du Danemarck 20 avril; du Mecklenbourg 26 avril; du Hanovre 5 mai; des Deux Siciles 17 mai; de Toscane 3 juin; de Belgique 25 avril; des iles Sandwich 17 juillet 1854

des armes ou munitions de guerre que l'on se proposera de fabriquer ou confectionner.

[47] Les maîtres de forges devront joindre à leur demande *les plans côtés des bouches à feu, et faire connaître l'espèce de fusion et de moulage qu'ils se proposeront d'employer.

2. Lorsque l'autorisation sera accordée, il en sera donné avis au préfet du département où se trouveront situés les établissements ou ateliers dans lesquels seront fabriquées ou confectionnées les armes ou munitions de guerre auxquelles se rapportera cette autorisation.

3. Les armes et munitions de guerre destinées aux navires de commerce ne pourront sortir des ateliers de fabrication, ni être expédiées aux ports de destination, qu'en vertu d'une autorisation du préfet du département.

L'autorisation du préfet énoncera le nombre ou la quantité et la nature des objets expédiés, l'itinéraire à suivre et le délai dans lesquels ils devront être transmis à leur destination; les conducteurs du chargement seront tenus de produire l'autorisation à toute réquisition.

4. A leur arrivée au port de destination, les armes de guerre seront placées dans un magasin ou dépôt de la marine, ou de l'un des autres service publics de l'état; elles y resteront sous la surveillance du chef de service.

5. Avant d'être livrées au commerce les armes seront éprouvées conformément aux instructions qui seront données par notre ministre secrétaire d'état au département de la guerre pour les armes portative, et par notre ministre secrétaire d'état au département de la marine et des colonies pour les bouches à feu.

6. La réception, ou le rejet des armes de guerre sera prononcé par l'officier qui aura procédé aux épreuves; en cas de rejet il sera délivré expédition du procès-verbal au fabricant; s'il y a réclamation de sa part il en sera référé au ministre, qui statuera définitivement.

7. Les frais de visite, d'épreuve, de réception, de transport, et d'entretien des armes seront à la charge des fabricants.

Les frais de déplacement de l'officier de l'artillerie qui procédera à l'épreuve et des agents sous ses ordres seront supportés par l'état.

8. Aucune arme de guerre ne pourra être extraite du dépôt qui lui sera affecté qu'en vertu d'une autorisation du chef du service de la marine, à qui le fabricant ou son représentant devra préalablement déclarer les noms des armateurs des navires pour lesquels la dite arme sera destinée.

Une expédition de l'autorisation sera immédiatement transmise par le chef du service de la marine au receveur des douanes du port d'armement.

9. Les cartouches et autres munitions de guerre seront placées dans le dépôt mentionné à l'article 4, et ne pourront en être retirées qu'au départ du navire et en se conformant aux dispositions indiquées ci-après.

10. Aucune arme de guerre ne pourra être embarquée sur les navires du commerce qu'en vertu d'une autorisation du chef du service de la marine du port d'armement, laquelle déterminera aussi, en raison de la nature et de la durée présumée du voyage, les quantités de munitions qui pourraient être embarquées.

11. Le chef du service de la marine veillera à ce qu'il ne soit embarqué sur chaque navire que le nombres d'armes de guerre que comporteront sa force et celle de l'équipage, et à ce que les bouches à feu soient réellement montées en batterie.

12. Les armateurs souscriveront, entre les mains du receveur des douanes du port d'embarquement, l'engagement cautionné de rapporter et de représenter les armes et munitions de guerre qu'ils auront été autorisés à embarquer, sauf par eux à justifier, au moyen de procès-verbaux signés par tous les officiers et au moins trois des principaux marins de bord, de la perte de tout ou partie des armes ou de l'emploi de tout ou partie des munitions embarquées; l'accomplissement de cette obligation sera constaté au moyen d'une vérification qui sera faite par les soins des agents de la marine, concurremment avec ceux des douanes, au retour du navire.

A cet effet, le rôle d'équipage devra toujours mentionner exactement le nombre, l'espèce, le calibre, et la valeur des armes, ainsi que la quantité, l'espèce, et la valeur des munitions qui auront été embarquées à l'armement.

13. Au désarmement du navire, les armes et munitions de guerre existant à bord entreront au dépôt dont il est fait mention à l'article 4; néanmoins le chef du service de la marine pourra autoriser l'armateur ou son représentant à conserver l'artillerie à bord.

14. Toute infraction aux disposition de l'article 12 sera poursuivie conformément aux lois sur l'exportation des armes et munitions de guerre.

Dans ce cas les poursuites auront lieu à la diligence des agents de l'administration des douanes.

15. Toute infraction aux autres dispositions contenues dans la présente ordonnance, notamment aux articles 1, 3, 4, 8, 9, 10, et 13 sera poursuivie conformément à la loi du 24 mai 1834.

16. Nos ministres secrétaires d'état aux départements de la guerre, de la marine et des colonies, et des finances sont chargés, chacun en ce qui le concerne, de l'exécution de la présente ordonnance.

Donné à Neuilly, le 12 juillet 1847.

(Signé) LOUIS-PHILIPPE.

Par le roi : le pair de France, ministre secrétaire d'état de la marine et des colonies,

(Signé) DUC DE MONTEBELLO.

N°. 7853.—*Loi sur la fabrication et le commerce des armes de guerre du* 14 *juillet* 1860.

Napoléon, par la grâce de Dieu et la volonté nationale, empereur des Français, à tous présents et à venir, salut :

Avons sanctionné et sanctionnons, promulgué et promulguons ce qui suit :

LOI.

Extrait du procès du corps législatif.

Le corps législatif a adopté le projet de loi dont la teneur suit :

Titre I.—De la fabrication et du commerce des armes ou des pièces d'armes de guerre.

Article 1er. Toute personne peut se livrer à la fabrication ou au commerce des armes ou des pièces d'armes de guerre, en vertu d'une autorisation donnée par le ministre de la guerre, et sous les conditions déterminées par la loi ou par les règlements d'administration publique.

Les armes ou les pièces d'armes de guerre fabriquées dans les établissements autorisés ne peuvent être destinées qu'à l'exportation, sans le cas de commandes faites par le ministre de la guerre pour le service de l'état.

2. Les armes de guerre sont ceux qui servent, ou qui ont servi à armer les troupes françaises ou étrangères.

Peut être réputée arme de guerre, toute arme qui serait reconnue propre au service de guerre, et qui serait une imitation réduite ou amplifiée d'une arme de guerre.

Les armes dites *de bord* ou *de troque* sont considérées comme armes de guerre et soumises aux mêmes règles.

3. L'autorisation mentionnée en l'article 1er ne peut être retirée, par le ministre de la guerre, que lorsque le fabricant ou le commerçant a encouru une condamnation, devenue définitive, soit par application des articles 13 § 2, 14 § 2, 15, et 16 de la présente loi, soit pour contravention à celle du 24 mai 1834, soit pour crimes et délits prévus,

1°. Par les articles 86 à 101, 209, 210, 211, 215, et 216 du code pénal ;

2°. Par la loi du 7 juin 1848, sur les attroupements ;

3°. Par les articles 1 et 2 de la loi du 27 juillet 1849 ;

4°. Par les articles 1, 2, et 3 de la loi du 27 février 1858.

4. Tout fabricant ou commerçant autorisé est tenu d'avoir un registre, coté et paraphé à chaque feuille par le maire, sur lequel sont inscrites, jour par jour,
[48] *l'espèce et la quantité des armes ou des pièces d'armes de guerre qu'il fabrique, achète, ou vend, avec indication de leur destination et des noms et domiciles des vendeurs ou des acheteurs.

Le maire vise et arrête ce registre au moins une fois tous les mois ; en cas d'absence ou d'empêchement il peut se faire suppléer par le commissaire de police.

5. Le ministre de la guerre et, en cas d'urgence, les généraux commandant les divisions ou les subdivisions militaires prescrivent, relativement aux dépôts d'armes ou de pièces d'armes de guerre qui existent dans les magasins des fabricants ou commerçants, les mesures que peut exiger l'intérêt de la sûreté publique.

6. Tous les canons d'armes de guerre destinés au commerce extérieur sont soumis à des épreuves constatées par l'application d'un poinçon.

Ces canons reçoivent, en outre, une marque dite d'exportation.

Titre II.—De l'importation, de l'exportation, et du transit des armes ou des pièces d'armes de guerre.

7. Toute importation d'armes de guerre et de canons ou d'autres pièces d'armes de guerre est interdite, à moins qu'elle ne soit autorisée ou ordonnée par le ministre de la guerre.

8. Des décrets déterminent ceux des entrepôts de douane dans lesquels les armes ou les pièces d'arme de guerre de provenance étrangère peuvent être exclusivement déposées.

Ces armes ou ces pièces d'armes peuvent, dans l'intérêt de la sûreté publique, être soumises aux mesures autorisées par l'article 5.

9. L'exportation des armes ou des pieces d'armes de guerre est libre, sous les conditions déterminées par la loi ou par les règlements d'administration publique.

Néanmoins un décret impérial peut interdire cette exportation par une frontière, pour une destination, et pour une durée déterminée.

Des décrets désignent le bureaux de douane par lesquels l'exportation peut s'opérer.

Quand l'exportation est interdite pour certaines destinations, les exportateurs doivent, sous les peines portées par l'article 4 du titre III. de la loi du 22 août 1791, justifier de l'arrivée des armes à une destination permise, au moyen d'acquits-a-cautions qui sont délivrés, au départ, par les soins de l'administration des douanes, et qui sont déchargés, à l'arrivée, par les agents consulaires de France.

10. Les armes ou les pièces d'armes de guerre ne peuvent transiter, ni être expédiées en mutation d'entrepôt, ou en ré-exportation, sans un permis du ministre de la guerre.

Si l'exportation est interdite pour une destination, les permis de transit delivrés pour cette destination antérieurement au décret qui prononce l'interdiction sont annulés de droit.

11. L'importation, dans le cas où elle est autorisée ou ordonnée par le ministre de la guerre, l'exportation, et le transit, ainsi que la circulation et le dépôt des armes ou des pièces d'armes de guerre, dans le rayon des frontières, restent soumis aux dispositions législatives ou règlementaires sur les douanes.

Titre III.—Dispositions pénales.

12. Quiconque, sans autorisation, se livre à la fabrication, ou au commerce des armes ou des pièces d'armes de guerre, est puni d'une amende de seize francs à mille francs et d'un emprisonnement d'un mois à deux ans.

Les armes ou pièces d'armes de guerre fabriquées ou exposées en vente sans autorisation sont confisquées.

Les condamnés peuvent, en outre, être placés sous la surveillance de la haute police pendant un temps qui ne peut excéder deux ans.

En cas de récidive, ces peines peuvent être portées jusqu'aux double.

13. Le fabricant ou le commerçant qui ne s'est pas conformé aux dispositions de l'article 4 de la présente loi est puni d'une amende de seize francs à trois cents francs et d'un emprisonnement de six jours à trois mois.

En cas de récidive, la peine peut être portée jusqu'au double.

14. Tout fabricant ou commerçant qui ne s'est pas conformé aux dispositions de l'article 6 est puni d'une amende de seize francs à trois cents francs. Les canons saisis sont confisqués.

En cas de récidive, l'amende peut être portée jusqu'au double.

15. La contrefaçon du poinçons d'épreuve ou du poinçon d'exportation et l'usage frauduleux de poinçons contrefaits sont punis d'une amende de cent francs à trois mille francs et d'un emprisonnement de deux ans à cinq ans.

16. Est puni d'une amende de seize francs à cinq cents francs et d'un emprisonnement d'un mois à deux ans quiconque, s'étant indûment procurés les vrais poinçons mentionnés en l'article précédent, en a fait usage.

17. Dans tous les cas prévus par la présente loi, il pourra être fait application de l'article 463 du code pénal.

Titre IV.—Dispositions générales.

18. Des règlements d'administration publique déterminent notamment les formes des demandes d'autorisation en matière de fabrication et de commerce des armes de guerre; le régime et le tarif des épreuves et des marques; les formalités auxquelles doit être assujetti le transport des armes à l'intérieur; enfin, toutes les mesures relatives à la surveillance de la fabrication et du commerce des armes de guerre.

19. Il n'est dérogé ni à la loi du 24 mai 1834, ni aux lois et règlements concernant les armes de chasse et de luxe et les armes prohibées.

20. Sont abrogées toutes dispositions contraires à celles de la présente loi.

Délibéré en séance publique, à Paris, le 20 juin 1860.

(Signé) Le président, COMTE DE MORNY.

(Signé) Les secrétaires, COMTE LOUIS DE CAMBACÉRÈS,
COMTE LÉOPOLD LETTON,
COMTE JOACHIM MURAT.

Extrait du procès-verbal du sénat.

Le sénat ne s'oppose pas à la promulgation de la loi concernant la fabrication et le commerce des armes de guerre.

Délibéré et voté en séance, au palais du sénat, le 30 juin 1860.

(Signé) Le président, TROPLONG.

(Signé) Les secrétaires, A. LAITY,
COMTE DE GROSSOLLES-FLAMARENS,
BARON T. DE LACROSSE.

Vu et scellé du sceau du sénat:

(Signé) Le sénateur secrétaire, BARON T. DE LACROSSE.

Mandons et ordonnons que les présentes, revêtues du sceau de l'état et insérées au bulletin des lois, soient adressées aux cours, aux tribunaux, et aux autorités administratives, pour qu'ils les inscrivent sur leurs registres, les observent, et les fassent observer, et notre ministre secrétaire d'état au département de la justice est chargé d'en surveiller la publication.

Fait au palais de Saint-Cloud, le 14 1860.

(Signé) NAPOLÉON.

Par l'empereur.

(Signé) Le ministre d'état, ACHILLE FOULD.

Vu et scellé du grand sceau:

Le garde des sceaux, ministre secrétaire d'état au département de la justice,

(Signé) DELANGLE.

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[49] * FRANCE.—No. III.

(Received from Her Majesty's embassy at Paris.)

Report from M. Treitt, counsel to the embassy.

À l'honorable M. JULIAN FANE, *M. P. S. M. B.:*

M. LE MINISTRE: Conformément à votre lettre du 25 février 1867, j'ai déjà eu l'honneur de vous remettre les textes de la loi dont le gouvernement français est armé pour empêcher ses nationaux de violer les lois de la neutralité vis-à-vis des belligérants; je viens aujourd'hui vous dire l'état des procédures et des mesures administratives qui ont surgi à l'occasion de six navires qui ont été construits en France, et qui étaient destinés à devenir des corsaires confédérés.

Le 15 avril 1863 un contrat a été signé entre M. Arman, constructeur maritime à Bordeaux et député au corps législatif, d'une part, et d'autre part M. James Dunwold Bullock, agissant par mandat resté alors secret pour le compte du gouvernement confédéré.

Les conventions portaient que, s'agissant d'établir une communication régulière par bateaux à vapeur entre Shanghai, Osaca, Yeddo, et San Francisco, passant par la détroit de Van Diemen, M. Arman s'engageait à construire quatre *steamers* de très-grande vitesse, portant 12 jours de combustible et pouvant recevoir un armement de 12 à 14 pièces de canon afin de pouvoir protéger leurs passagers et leurs cargaisons dans ces mers lointaines; en un mot, ils devaient réunir les principales conditions des corvettes de guerre de la marine française.

M. Arman devait construire lui-même deux des bâtimens à Bordeaux à 400 chevaux de force et de 1,550 tonneaux. Il était autorisé à confier la construction des deux autres bâtimens à M. Voruz, constructeur à Nantes, et aussi député au corps législatif. Les quatre bâtimens devaient être prêts à faire leurs essais dans un délai de 10 mois. Le prix de chacun a été fixé à 1,800,000 francs, payables par cinquièmes pendant la construction. L'artillerie, les armes, les projectiles, les poudres restaient à la charge de M. Bullock.

Le 15 juillet 1863 il fut signé un second contrat entre les mêmes personnes pour la construction de deux béliers à vapeur cuirassés et munis de deux blockhaus blindés. Les conditions du contrat étaient les même, si ce n'est le prix qui à été stipulé pour chaque bélier à 2,000,000 francs. Le banquier de M. Bullock était M. Erlanger. De plus, la destination de ces deux béliers n'était pas indiquée.

La construction commença immédiatement à Bordeux et à Nantes, chez MM. Jollet et Babin et aussi chez MM. Dubigeot et fils. Les machines furent confiés à MM. Mazeline et cie. au Havre.

Je cite tous ces noms parceque plus tard on les trouvera englobés dans un procès que le président des États-Unis a intenté à ces différentes personnes.

Les navires furent rapidement achevés, et M. Arman, conformément à l'ordonnance du 12 juillet 1847, s'adressa au ministre de la marine pour obtenir l'autorisation d'armer les quatre navires de 12 à 14 canons, navires, disait-on, déstinés à une ligne de *steamers* dans les mers de Chine et la mer Pacifique. L'autorisation fut accordée le 6 juin 1864; deux des navires avaient été lancés à Nantes an avril. Mais alors intervient M. Dayton, ministre des États-Unis. Par ses actives demandes il apporta aux ministres de la marine et des affaires étrangères la preuve que les navires commandés à M. Arman par M. Bullock étaient destinés à devenir des corsaires du sud probablement; le gouvernement fit aussi une enquête, et le 22 octobre le ministre de la marine, malgré les dénégations apportées dans toute cette affaire, retira à MM. Arman et Voruz l'autorisation qu'il leur avait précédemment donnée d'armer les navires.

Qu'allaient devenir ces navires? Les amis de l'Amérique du Nord s'en inquiétaient alors considérablement et craignaient qu'à l'aide de ventes fictives ils ne quittassent la France pour arborer en pleine mer le pavillon confédéré, puisque c'est ainsi que l'Alabama, la Florida, la Géorgia, et le Rappahannock avaient trompé la vigilance des autorités anglaises.

Il s'était établi une polémique assez vive dans la presse à ce sujet.

Voici quel a été le sort des six navires dont la construction avait été confiée à M. Arman, avec le concours des personnes ci-dessus dénommées, je crois que mes informations sont exactes.

Le Yeddo et le Osaca, construits à Bordeaux, ont été vendus à la Prusse.

Le Shanghai et le San Francisco ont été vendus en Pérou.

L'un des béliers, le Chéops, a été vendu à la Prusse, l'autre, le Sphinx, avait été vendu au Danemarck et conduit à Copenhague.

Mais le gouvernement danois (sous j'ignore quel prétexte) refusa d'en prendre livraison.

On lui donna alors le nom d'Olinde, et muni d'un équipage danois, pourvu de papiers de bord réguliers en destination de Bordeaux le navire fut ramené sur les côtes de France.

Il s'arrêta dans la petite île d'Houat, à quelques lieues en mer à l'ouest de Quiberon. Là il fut accosté par deux navires, l'un lui apporta une provision de charbons; l'autre The City of Richmond, le pourvut de canons, de munitions, et d'un équipage confédéré. L'Olinde alla successivement à la Corogne, à Lisbonne, aux Azores, à Cuba, et à la Havanne où il tomba aux mains des Américains du nord.

Telle est l'histoire des six corsaires confédérés commandés en France; les agents américains ne les ont point perdus de vue pendant un jour, le gouvernement français a fait droit à leurs dénonciations, et c'est ainsi que le gouvernement américain n'a pas jusqu'à présent adressé de réclamations à la France. Celle-ci même a surveillé très-attentivement le Rappahannock pendant le temps qu'il est resté dans le eaux de Calais, ville d'où il s'est inopinément enfui. La France n'a donc pas à répondre des faits du Rappahannock, qui figure dans le chapitre des réclamations concernant l'Angleterre.

Mais si le président des États-Unis ne s'est pas adressé au gouvernement français, il a intenté directement un procès à MM. Arman, Voruz, Jollet, Barbin, Dubrigeon, Marzeline, Erlanger, à tous ceux enfin qui ont pris une part quelconque à la construction ou mise en état des six navires, *futurs corsaires*. Il leur réclame, tant commeré pétition que comme dommages-intérêts, une somme de 2,880,000 francs, qu'ils auraient reçue à valoir sur le prix des navires commandés.

Son action est fondée sur les trois articles suivants du code Napoléon:

ART. 1376. Celui qui reçoit par erreur ou sciemment ce qui ne lui est pas dû, s'oblige à le restituer à celui de qui il l'a indûment reçu.

ART. 1382. Tout fait quelconque de l'homme qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé à le réparer.

ART. 1383. Chacun est responsable du dommage qu'il a causé, non seulement par son fait, mais encore par sa négligence ou son imprudence.

Le premier de ces trois articles statue sur le droit de réclamer ce qui a été payé sans être dû. Or, le contrat entre M. Arman et M. Bullock étant nul comme contraire à la loi française, il n'était rien dû en vertu de ce contrat, et ce qui a été payé doit être restitué.

Quant aux deux autres articles, ils règlent le principe des dommages-intérêts dûs par le fait, ou l'imprudence des défendeurs.

Telle sera, dit-on, l'argumentation sur laquelle s'appuiera la demande du président des États-Unis.

Mais jusqu'à présent le procès en est encore aux préliminaires.

La loi française autorise les défendeurs à réclamer des demandeurs *quand ils sont étrangers* la caution *judicatum solvi* pour assurer le paiement des frais du procès.

Devant le tribunal de première instance MM. Arman et consorts ont demandé le

dépôt de 150,000 francs pour a caution *judicatum solvi*, à raison des frais du fisc et d'autres très-considérables que le procès occasionera.

[50] *M. le président a offert de déposer seulement 5,000 francs.

Mais le tribunal a maintenu le chiffre demandé de 150,000 francs.

M. le président des États-Unis a interjeté appel de cette décision.

La cour impériale jugeant en appel a également maintenu les 150,000 francs.

Maintenant le président des États-Unis ne pourra donner suite à son procès qu'après avoir déposé cette somme dans une caisse publique.

Ce procès ne sera guère plaidé avant trois mois.

Agréez, etc.,

(Signé) TREITT.

PARIS, *le* 3 *mars* 1867.

FRANCE.—No. IV.

PARIS, *December* 4, 1867.

MY LORD: I have the honor to transmit to your lordship a further report from M. Treitt on the subject of the action brought by the Government of the United States in the French courts, against persons concerned in equipping armed vessels for the so-called Confederate States.

I have the honor to be, &c.,

(Signed) LYONS.

The LORD STANLEY, M. P.

A son Excellence LORD LYONS,

Ambassadeur de S. M. B. à Paris:

MILORD, à la date du 20 février et 13 mars 1867 j'ai eu l'honneur de transmettre au *foreign office* les dispositions de la loi de France contre les violations de la neutralité, ainsi que des renseignements sur le sort des differents corsaires que les états du sud avaient armés ou essayé d'armer pendant la guerre de la sécession en Amérique.

J'avais annoncé en même temps que les États-Unis devaient intenter un procès à plusieurs armateurs français, pour les faire condamner par les tribunaux de France à restituer au gouvernement de Washington tout l'argent que ces armateurs ont touché des agents du sud, et de plus, à lui payer des dommages-intérêts.

Ce procès est en ce moment pendant devant le tribunal de première instance à Paris, et il sera probablement plaidé dans le courant de l'année prochaine.[1]

Je viens aujourd'hui mettre en relief les arguments sur lesquels les États-Unis basent leur action.

La demande se formule ainsi: "Dès le commencement des hostilités entre le nord et le sud, le gouvernement français à affirmé sa neutralité par une déclaration insérée au Moniteur du 10 juin 1861, par laquelle déclaration il est interdit à tout français de prendre commission de l'une des deux parties pour armer des vaisseaux en guerre, ou d'accepter des lettres de marque; pour faire la course maritime, *ou de concourir* D'UNE MANIÉRE QUELCONQUE *à l'équipement ou à l'armement d'un navire de guerre ou corsaire de l'une des deux parties.*"

Les contrevenants à ces défenses en courront les dispositions prévues par les lois, entre autres, les dispositions des articles sévères 84 et 85 du code pénal français.

Une semblable déclaration avait été faite par l'Angleterre.

Néanmoins, les confédérés du sud trouvèrent en Angleterre et en France des gens fort empressés à violer les lois de leur patrie. Le sud envoya en Angleterre les capitaines Maury et Bullock sous la direction desquels furent armés et lancés sur les mers les corsaires l'Alabama et la Floride; mais le gouvernement anglais sur les énergiques réclamations des États-Unis, après avoir fait saisir l'Alexandra, à Liverpool, et le Pampero, à Glasgow, finit par déclarer qu'il ne laisserait pas prendre la mer à deux béliers blindés qui se construisaient à Liverpool, et ferma ainsi les chantiers et les arsenaux de la Grande-Bretagne aux confédérés. Ceux-ci, alors, s'adressèrent à la France. Ils firent des traités avec M. Lucien Arman, grand constructeur à Bordeaux et membre du corps législatif.

Les États-Unis reprochent vivement à ce député d'avoir, dans les discussions au corps législatif, engagé le gouvernement français, à ne pas reconnaitre le blocus des côtes du sud et d'avoir ainsi voulu couvrir ses intérêts personnels du voile de l'intérêt politique et commercial de la France.[2]

En effet, M. Arman était, vers cette même époque, devenu le chef d'une association qui s'engageait à vendre au sud des navires de guerre. Ces navires, disait-on, étaient destinés à établir une ligne régulière de navigation entre Shanghai et San Francisco. Le contrat passé entre M. Arman et le Capitaine Bullock est du 15 avril 1863. M.

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[1] Le procès est en ce moment (mai 1868) sur le point d'être plaidé.

[2] Discussion de l'adresse, séance du 12 février 1863, Moniteur du 13.

Arman s'engage à fournir dans un délai de dix mois deux navires; il est autorisé à confier la construction de deux autres navires à M. Voruz, également membre du corps législatif. Les deux premiers navires devaient être armés à Bordeaux; les deux autres à Nantes ou plutôt à St. Nazaire.

M. Erlanger, banquier de M. Bullock, intervient au contrat pour en garantir en partie le paiement.

Les États-Unis reprochent encore à M. Arman d'avoir le 1 juin 1863, écrit une lettre au ministre de la marine pour lui demander l'autorisation d'armer ces navires et d'avoir sciemment trompé le ministre en lui donnant l'assurance que ces navires étaient destinés aux mers de la Chine et du Pacifique, et d'avoir ainsi frauduleusement surpris l'autorisation gouvernementale, qu'il a en effet obtenue le 6 juin 1863. Les États-Unis produisent tous les écrits à l'appui de leurs assertions; et toutes les circonstances et toutes les conditions du contrat du 15 avril 1863 sont parfaitement établies par le texte du traité même et par la présentation des correspondances échangée entre les diverses parties engagées. De plus, par une lettre du 12 juin 1863, M. Arman proposait aux agents du sud de se charger encore de la confection de six batteries canonnières blindées; il s'engageait aussi à obtenir les autorisations gouvernementales nécessaires pour l'armement de ces navires.

Tous ces faits avaient jusqu'alors échappé à l'attention du gouvernement français, quand, en septembre 1863, M. Bigelow, consul américain à Paris, les signala à M. Dayton, ministre plénipotentiaire des États-Unis en France.

Celui-ci les fit connaitre immédiatement au gouvernement impérial et demanda formellement à M. Drouyn de Lhuys que l'autorisation d'armer les navires accordée à M. Arman par le ministre de la marine lui fût retirée.

Ces communications surprirent le gouvernement français ainsi qu'il résulte des dépêches de M. Dayton à M. Seward des 11 et 22 septembre 1863.

Il se fit une échange de correspondances entre le ministre des affaires étrangères et le ministre de la marine. Ce dernier déclare "qu'il ne pouvait que s'en rapporter à la déclaration de MM. Arman et Voruz, et ne saurait être responsable des opérations illicites qui pourraient être entreprises."

Le gouvernement français fit une enquête, MM. Arman et consorts nièrent énergiquement les faits dont l'évidence était cependant indiscutable. Et le 22 octobre 1863, M. Drouyn de Lhuys écrivait à M. Seward que MM. Armand et Voruz, montraient une *véritable indignation à l'endroit des charges qui pèsent sur eux.*

Quoiqu'il en soit, le ministre de la marine notifia à MM. Armand et Voruz
[51] qu'il leur retirait l'autorisation* qu'ils avaient obtenue pour armer les quatre navires en construction à Nantes et à Bordeaux.

Le retrait de l'autorisation ne semble pas avoir arrêté MM. Arman et consorts dans leurs opérations; les agents des États-Unis continuèrent leur étroite surveillance.

M. Arman, en février 1864, pendant la discussion de l'adresse au corps législatif, proposa un amendement qui tendait à pousser le gouvernement français hors des voies de la neutralité; mais cet amendement fut retiré par son auteur.

Dans une dépêche de M. Dayton, à M. Seward du 14 février 1864, le ministre américain, à Paris, regrette que cet amendement ait été retiré, car cela eut été une excellente occasion de mettre en lumière toutes les circonstances de l'histoire de la construction des corsaires à Nantes et à Bordeaux.

MM. Arman et consorts pour dégager leur responsabilité paraissent avoir affirmé au ministre des affaires étrangeres de France que deux navires cuirassés avaient été vendus au gouvernement danois; M. Drouyn de Lhuys le disait à M. Dayton le 4 février 1864.

M. Dayton prit des informations à Copenhague. La réponse du gouvernement danois fut négative.

En avril 1864, pareille communication fut faite à M. Dayton par M. Drouyn de Lhuys, avec cette différence que cette fois les mêmes deux navires avaient été vendus à la Suède le 15 avril 1864; le ministre des affaires étrangères de Suède et Norvége démentait le fait dans une dépêche adressée au ministre des États-Unis, à Stockholm.

Enfin à la séance du 12 mai 1864,[1] du corps législatif, l'orateur du gouvernement donna les assurances les plus positives que les navires de M. Arman ne sortiraient pas des ports français, sans qu'il fut bien "démontré que leur destination n'affecte point les principes de neutralité que le gouvernement français veut rigoureusement observer à l'égard des belligérants."

En présence de ces allures si décidées du gouvernement impérial les deux navires de Bordeaux, l'Yeddo et l'Osaka, furent définitivement vendus et livrés à la Prusse en juin et juillet 1864.

Les deux navires construits à Nantes, le San Francisco, et le Shanghai, donnèrent lieu à tout autant de surveillance, de correspondances que ceux de Bordeaux. Par suite des mesures prises par le gouvernement impérial les contracteurs nantais furent obligés de les vendre au gouvernement péruvien, qui en prit livraison dans les premiers jours de 1865. M. Voruz assure avoir remboursé à M. Bullock toutes les sommes qu'il a reçues

[1] Moniteur du 13 mai 1864.

du gouvernement péruvien pour prix de ces deux navires, et que ces sommes sont égales à celles qu'il avait lui-même touchées des agents du sud; seulement un excédent de bénéfice a été partagé entre M. Voruz et M. Bullock.

Restaient encore deux béliers blindés avec éperons que M. Arman s'était engagé à construire par un deuxième contrat du 16 juillet 1863, par conséquent postérieur au contrat du 15 avril 1863. Ce sont là les deux navires qui avaient été déclarés comme vendus successivement au Danemarck et à la Suède.

Voici leur histoire telle que la racontent les États-Unis.

L'un d'eux s'appelait le Sphinx. Le 31 mars 1864, un mandataire de M. Arman, M. Arnous-Rivière, signait un contrat de vente du Sphinx avec le gouvernement danois. Le navire devait être livré le 10 juin 1864, mais il ne fut prêt que le 20 octobre, et le gouvernement danois, sur le rapport de ses officiers, et aussi sur le rapport d'un arbitre du tribunal de commerce de Bordeaux, refusa définitivement de devenir acquéreur du Sphinx.

Mais M. Arman, sous prétexte qu'il voulait s'en rapporter à la générosité du gouvernement danois *pour le prix*, obtint l'autorisation d'envoyer le Sphinx à Copenhague. Il le sortit ainsi du port de Bordeaux; le navire fut envoyé à Copenhague sous pavillon français, et reçut le nom de *Stoer Kodder*.

Mais le gouvernement danois ne voulut point acheter (à aucun prix, parait-il), le navire de M. Arman, et celui-ci dût songer à le ramener en France. Comme le capitaine et l'équipage français avaient été congédiés à Copenhague à l'arrivée du navire, il fallut le pourvoir d'un équipage danois, et le même mandataire de M. Arman, M. Arnous-Rivière, obtint la faveur toute exceptionelle de faire partir le navire sous pavillon danois, mais seulement pour le voyage de Copenhague jusqu'à Bordeaux, où les papiers de bord devaient être remis au consul danois.

M. Arnous-Rivière partit alors sur le Stoer Kodder, et après plusieurs relâches vint jeter l'ancre dans les eaux françaises devant la petite île d'Houat, voisine de la presqu'île de Quiberon. Là, le Stoer Kodder prit le nom d'Olinde, et devint un navire de guerre pour les confédérés du sud. En effet, par le soins des MM. Dubigeon, de Nantes, qui avaient pris part à la construction du Shanghai et du San Francisco, un remorqueur de St. Nazaire avait apporté du charbon à l'Olinde, puis débarqua la majeure partie de l'équipage danois à Quiberon, et les officiers à St. Nazaire.

En même temps un vapeur anglais apportait à l'Olinde son artillerie et ses munitions, ainsi qu'un équipage confédéré. Cet équipage était celui du corsaire la Florida, le commandant était le Capitaine Page. Le bélier changea encore une fois de nom et devint le Stonewall, il se rendit en Espagne, au Ferrol.

Ces faits s'étaient passés dans les derniers jours de janvier 1865; le gouvernement français n'en fut averti que trop tard. Il déclina tout responsabilité, et la rejeta sur le Danemarck, qui avait eu le tort de délivrer des papiers de navigation à ce navire, qui devait à juste titre lui être suspect.

En Espagne le représentant du gouvernement des États-Unis voulut en vain faire retenir le Stonewall. Le corsaire partit pour Lisbonne, mais les autorités portugaise l'obligèrent à partir immédiatement. Il était surveillé par deux frégates américaines, le Niagara et le Sacramento, qui suivirent le Stonewall jusque dans le port de la Havanne, où les autorités espagnoles le remirent aux agents américains.

Il y eut, à l'occasion de ces faits, un échange, de communications entre M. Drouyn de Lhuys et M. Bigelow; une lettre écrite par ce dernier le 10 février 1855, constate que le ministre de la justice en France avait été saisi de la connaissance de ces faits, afin d'y être statué conformément à la loi s'il y avait lieu. Du reste M. Arnous-Rivière ne niait point ces faits, et dans une lettre publiée dans un journal, il déclarait qu'il était prêt à répondre à la justice, et à lui prouver qu'il n'avait pas violé les lois.

Le gouvernement américain ne s'est plus occupé de la poursuite criminelle qu'on lui avait annoncée et ne sait pas ce qu'il en est advenu.

Quant au second bélier blindé, que M. Arman construisait en même temps que le Stonewall et qui s'appelait le Chéops, il fut vendu à la Prusse. Le gouvernement français avait pris les mesures les plus sévères pour s'assurer de la sincérité de cette vente, M. Drouyn de Lhuys "was unwilling to be caught again, as in the case of the Stonewall;" ainsi que le dit M. Bigelow dans une lettre à M. Seward à la date du 17 mars 1865.

Tels sont les faits que les États-Unis exposent à la justice française et sur lesquels ils s'appuient pour intenter un procès à MM. Arman, Voruz, Dubigeon, Erlanger, et autres.

L'instance à deux objets, 1°, une revendication de propriété; 2°, un règlement de dommages-intérêts. Les États-Unis réclament d'abord comme leur propriété nationale, l'argent qui a été versé entre les mains de M. Arman et consorts par des individus se disant agents confédérés, et que les défendeurs détiennent en vertu d'actes illicites et sans titre légitime.

Les États-Unis poursuivant en second lieu, conformément à l'article 1382 du code Napoléon, la réparation du préjudice que leur ont causé les défendeurs
[52] *pendant les années 1863, 1864, et 1865 en violant à leur égard les dévoirs de la

neutralité, tels qu'ils résultent du droit des gens et des dispositions spéciales des lois de la France.

Pour justifier son action en revendication de l'argent payé à MM. Arman et autres, le gouvernement de Washington prétend que c'est là de l'argent enlevé à la trésorerie des États-Unis par des rébelles qui n'ont jamais été reconnus comme un état ; l'autorité fédéral n'a jamais cessé d'exister en droit dans les états insurgés; la qualité de belligérants reconnue aux confédérés par la France n'a pu infirmer le droit de l'autorité fédérale; la France, en attribuant aux confédérés la qualité de belligérants, n'a eu pour but et pour effet que de maintenir sa propre neutralité. L'argent versé entre les mains de MM. Arman et autres n'a été fourni qu'en vertu d'un contrat illicite, et doit, par conséquent, être restitué au légitimes propriétaires qui sont les États-Unis.

Cette argumentation est appuyée de textes de la constitution américaine, du code Napoléon, d'opinions d'auteurs qui ont écrit sur le droit des gens et défini les cas de violation de la neutralité et les conséquences que ces cas entraînent, et de la citation des traités mentionés dans l'histoire et relatifs à la neutralité entre les nations, et des précédents qui ont signalé les rapports des peuples dans les guerres antérieures.

Enfin, les États-Unis cherchent à démontrer qu'ils ont toujours observé partout les lois de la neutralité et citent, à ce propos, les indemnités qu'ils ont accordés à des sujets anglais en 1794; ces sujets anglais avaient été lesés par des corsaires français qui, à l'insu du gouvernement américain, étaient sortis des ports de l'Amérique où ils avaient été équipés.

Les États-Unis citent d'autres cas où ils se sont empressés de faire respecter les droits de la neutralité. En 1853 ils ont fait interrompre la construction des vaisseaux destinés à la Russie, même avant que la guerre ne fut commencée ; en 1855 ils ont arrêté le Maury sur le simple soupçon d'être équipé en corsaire.

Après avoir ainsi mis en relief les procédés de l'Amérique, les États-Unis mettent en évidence les actes reprochés à MM. Arman, Voruz, et autres, et prouvent qu'ils sont illicites et contraires au droit des gens et aux lois de la France. Il n'est donc pas douteux que les sommes remises à MM. Arman et autres, en vertu de contrats illicites, sont *sans cause* dans leurs mains et qu'ils en doivent la réstitution à leur légitime propriétaire les États-Unis, d'autant plus que MM. Arman et consort n'ont jamais pu ignorer les vices de leur possession, et que d'après les articles 549 et 550 du code Napeléon, le possesseur de mauvais foi ne fait jamais les *fruits siens*, et doit les restituer au propriétaire légitime ; au moyen de ce dernier argument les États-Unis réclament à MM. Arman et autres non seulement les sommes elles-mêmes mais l'intérêt à partir du jour où l'argent a été encaissé en France.

Le deuxième objet de la demande des États-Unis contre MM. Arman et consorts est une somme de 2,800,000 francs de dommages-intérêts. Cette demande repose sur l'article 1383 du code Napoléon, qui dit, "*Tout fait quelconque de l'homme qui cause à autrui un dommage oblige celui par la faute duquel il est arrivé à le réparer.*"

Voici comment les États-Unis justifient du préjudice qu'ils ont éprouvé.

MM. Arman et consorts au moyen de leur position officielle dans le monde politique, ont fait et laissé croire qu'ils agissaient avec l'assentiment secret du gouvernement français et ont ainsi donné des espérances à la rébellion du sud qui s'attendait à une intervention française.

Les armaments qui se préparaient en France ont paralysé le commerce américain à ce point, que les armateurs du nord, pour se soustraire aux menaces des corsaires préparés en Angleterre et en France, ont fait dénationaliser leurs navires. C'est ainsi que 715 navires américains sont devenus anglais pendant la guerre de la sécession.[1]

MM. Arman et consorts sont en partie cause des appréhensions du commerce américain, de la paralysie qui a atteint ses opérations, et lui ont ainsi causé un préjudice réel dont ils doivent la réparation.

Quant au chiffre même des dommages-intérêts les États-Unis assurent que la somme de 2,800,000 francs est très-modérée en présence du chiffre des indemnités qu'ils réclament à l'Angleterre.

Tel sont les éléments du procès du gouvernement de Washington contre les armateurs français. J'ai puisé ces éléments dans le dossier des avocats des États-Unis.

Je n'ai pu connaître encore les défenses que produiront MM. Arman et consorts; on pense qu'ils déclineront la compétence des tribunaux français en cette matière qui est toute politique. On dit encore qu'ils prétendront que s'ils ont violé la loi de France c'est le gouvernement française seul qui peut leur en demander compte et engager leur résponsabilite, mais nullement un gouvernement étranger.

C'est là tout ce que l'on sait jusqu'à présent sur la défense. En attendant qu'elle se soit fait connaître j'ai pensé qu'il était utile d'exposer les moyens de la demande à cause du conflit existant à ce même sujet entre la Grande-Bretagne et l'Amérique.

Cet exposé fait suite à mes notes antérieures que le *foreign office* m'avait demandées. Je souhaite qu'elle remplisse son attente.

Je, &c.,
(Signé) TREITT.

PARIS, *le 3 décembre* 1867.

[1] Lettre de M. Seward à M. Bigelow, le 15 mars 1865.

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INSTITUT IMPÉRIAL DE FRANCE—ACADÉMIE DES SCIENCES MORALES ET POLITIQUES.

Les neutres pendant la guerre d'orient—Mémoire lu par son excellence M. Drouyn de Lhuys dans la séance du 4 avril 1868.

(Received from Her Majesty's embassy at Paris.)

Les péripéties qui ont amené la guerre d'orient en 1854 sont présentes à tous les souvenirs. L'ambassade hautaine du prince Mentchikoff, à Constantinople, et ses exigences impérieuses avaient, en démasquant tout à coup les plans du cabinet de Saint-Pétersbourg, rapproché les puissances occidentales dans un sentiment de solidarité devant le péril qui s'annonçait. La France, d'abord particulièrement impliquée dans la discussion qui s'était engagée au sujet des Lieux-Saints, n'a pas tardé à reconnaître et à proclamer le caractère européen du débat, agrandi par les prétentions inattendues de la cour de Russie. L'Angleterre, s'associant à nos vues, s'était placée résolûment à nos côtés. L'Autriche, la Prusse, la plupart des états de l'Europe retrouvaient leur propre cause dans celle de l'équilibre général menacé, et témoignaient leurs sympathies aux défenseurs de l'intérêt commun.

Bientôt la situation dessinée dans l'ombre des négociations diplomatiques se produisait au grand jour. La Russie poussant plus avant dans la voie où elle était entrée, passait des paroles aux faits et occupait une partie du territoire ottoman. Cette puissance, naguère si entourée de clients et d'amis, se condamnait ainsi elle-même à marcher dans l'isolement, car les alarmes qu'elle suscitait détachaient d'elle les derniers appuis de sa politique. L'Autriche, atteinte dans sa sécurité par les événements dont sa frontière était théâtre, rassemblait ses troupes et se montrait disposée à
[53] soutinir, le cas échéant, ses protestations par les armes. La *modération de la France et de l'Angleterre, qui avaient déterminé le sultan à ne pas considérer comme un acte de guerre l'invasion d'une province de son empire, eût pu encore détourner la catastrophe; mais la lueur sinistre de l'incendie de la flotte turque, bombardée devant Sinope, fit éclater aux yeux de tous l'inévitable nécessité de la guerre.

Les puissances alliées ne songèrent plus qu'à l'accomplissement des devoirs qui s'imposaient à elles. Unies pour le salut de l'Europe, que le démembrement de la Turquie eût exposée à une crise redoutable, la France et l'Angleterre puisaient dans le sentiment du droit et dans l'intimité d'une alliance honnête une force proportionnée à la grandeur de l'entreprise.

On se rapelle le prodigieux élan de ces jours de résolution énergique et de cordiale confiance. Les gouvernements, animés du même esprit qui entraînait les deux nations l'une vers l'autre, s'attachaient à faire disparaître, au profit de la civilisation et de l'humanité, les traces de divisions séculaires.

Un des objets essentiels sur lesquels devait d'abord se porter leur attention était la conduite, qu'en leur qualité de belligérants, ils auraient à observer à l'égard des puissances neutres. Sur ce point, comme sur tant d'autres, des traditions divergentes les séparaient. Cependant, l'intérêt de la cause qu'ils avaient prise en mains leur conseillait de se mettre d'accord, dès le début des hostilités, sur cette importante question. En effet, les forces alliées, appelées à opérer ensemble dans des conditions identiques, pourraient-elles obéir à des principes dissemblables sans amener une confusion funeste et une série de conflits? N'était-il pas à présumer, d'autre part, que les neutres, dont nous devions nous efforcer de conserver le bon vouloir, se verraient, avec étonnement, dans une guerre enterprise au nom de l'équité internationale, soumis à des restrictions qui ne découleraient pas d'une règle constante et précise, et qu'ils réagiraient, au détriment de notre œuvre commune, contre les vexations d'une jurisprudence sans uniformité?

L'histoire des derniers siècles atteste, par une suite de sanglants témoignages, combien la Grande-Bretagne et la France ont compris différemment dans le passé les droits et les devoirs des puissances maritimes en temps de guerre; le profond dissentiment des deux nations à cet égard s'est manifesté par des luttes continuelles, où rien n'était épargné pour faire prévaloir l'une contre l'autre des législations opposées.

Au moment où allait s'ouvrir la guerre d'orient, le droit professé par les deux nouvelles alliées, tel qu'il résultait pour chacune d'elles de leurs antécédents historiques, des stipulations fondamentales de leurs lois et de leurs traités avec d'autres états, enfin, des livres de leurs publicistes les plus autorisés, pouvait se résumer comme il suit:

La France, s'armant du droit reconnu par les usages de la guerre de priver son ennemi d'une portion considérable de ses ressources au moyen de la destruction de son commerce maritime, mais combinant l'exercice de ce droit avec le principe de l'inviolabilité du pavillon des puissances non-belligérantes, considérait qu'il lui était permis de saisir, avec les bâtiments ennemis, toutes les marchandises chargées à bord, même

celles qui appartiendraient à des neutres. Fidèle, d'autre part, au respect dû aux puissances avec lesquelles elle demeurait en paix, elle s'interdisait de capturer sur leurs navires la propriété même de ses ennemis.

L'Angleterre, ne se préoccupant que d'aller droit à la marchandise de son adversaire pour l'anéantir, et indifférente aux salutaires fictions derrière lesquelles s'abrite l'indépendance des petits états, s'arrogeait la faculté de visiter tout bâtiment rencontré en haute mer, et, quel qu'en fût le pavillon, d'y confisquer les biens de l'ennemi. En revanche, elle s'abstenait de toucher à la propriété neutre, même sous pavillon belligérant.

C'était encore une tradition de la Grande-Bretagne que d'interdire aux neutres, pendant la guerre, le commerce que les belligérants réservent en temps de paix a leurs propres sujets, comme c'est le cas dans plusieurs pays pour le cabotage et la navigation coloniale. Cette prétention, emise d'abord, au début de la guerre de sept ans, s'était maintenue dans la doctrine anglaise sous le nom de la règle de 1756.

Enfin, en matière de blocus, les Anglais avaient adopté des pratiques contre lesquelles au temps de nos grandes guerres, nous avions toujours élevé les protestations les plus vives. Tout en proscrivant en théorie les blocus sur papier, ils avaient fait des blocus par simples croisières une application non moins abusive. Il suffit de rappeler que le blocus continental, cette mesure gigantesque de rétorsion, a été provoqué, au commencement de ce siècle, par les excès dont le gouvernement britannique avait donné l'exemple.

Telles étaient les coutumes diverses qu'il s'agissait de ramener à l'unité. Dès les premiers jours de janvier 1854, le ministre des affaires étrangères de France signalait, dans ses entretiens avec le représentant de la Grande-Bretagne, à Paris, l'importance considérable qui s'attachait, selon lui, à une manifestation publique de bon accord entre les deux pays sur des questions d'une conséquence si décisive pour la nature de leurs rapports avec les puissances neutres.

Afin d'atteindre ce but, on devait éviter, disait-il, l'invocation de principes absolus, car l'opposition entre ceux que l'Angleterre maintenait avec une énergie traditionnelle et ceux que nous nous faisions gloire de défendre était tellement radicale, qu'en les dressant les uns en regard des autres, on se condamnait à une contradiction sans issue. Il fallait trouver un terrain sur lequel les alliés, en réservant au besoin leurs théories particulières, puissent se concerter pour une pratique commune. Or, cela n'était possible qu'à une condition, c'est que chacun renonçât, au moins pour la durée de la guerre, à user des facultés que l'un des deux s'estimait permises, mais que proscrivait l'autre. Il est concevable, en effet, que, sans répudier un droit, sans se départir d'une prétention, l'on s'abstienne pour un temps de les faire valoir, tandis qu'on ne saurait, sans inconséquence, exercer, même exceptionnellement, des actes dont on conteste la légitimité. Ce mode de transaction, laissant intactes les doctrines, ne heurtait aucun principe, ne soulevait aucun embarras. Destiné d'ailleurs à être accueilli avec reconnaissance par les puissances non-belligérantes, il était conforme aux intérêts comme aux intentions libérales des alliés.

Un tel langage, tout en impliquant de notre part l'abandon de quelques-uns des privilèges que revendiquait notre marine, était cependant en harmonie avec nos traditions nationales, constamment favorables aux droits des neutres et à la liberté des mers. De sérieux motifs de réflexion, tirés de la situation générale du moment, nous encourageaient dans cette voie. L'initiative de la France et de l'Angleterre, marchant au secours d'un allié opprimé, avait l'opinion pour elle dans la plus grande partie de l'Europe, et cette disposition des esprits était un élément de force pour les deux puissances, qui pouvaient espérer en retirer un jour une aide plus effective encore. Une des conséquences heureuses de leur attitude était de leur permettre de déclarer l'alliance ouverte à tous les états qui, en vue de l'intérêt général, voudraient y accéder dans les termes où elles-mêmes l'avaient conclue. Elles devaient donc veiller à ce que rien, dans leur conduite, ne vînt blesser des neutralités bienveillantes qu'elles désiraient transformer en concours avoué.

On sait de quel poids pesèrent, en effet, les puissances neutres dans les négociations relatives à la guerre d'orient, combien le suffrage approbateur du plus grande nombre, l'adhésion formelle de quelques-unes, contribuèrent à assurer à la France et à l'Angleterre cette position prédominante que consacra définitivement le succès de leurs armes. Les cours allemandes, en particulier, influèrent beaucoup par leurs résolutions sur la marche des événements. Or, au moment où la crise éclatait, l'Allemagne entière était soumise depuis trop longtemps à l'ascendant de notre adversaire, grands et petits états étaient rattachés à lui par trop de liens, pour qu'il fût sage, en prévision du rôle réservé à ce pays, de refroidir par l'alarme des intérêts matériels les sentiments qui commençaient à s'y faire jour en notre faveur.

[54] "La prudence qui nous commandait de ménager le commerce allemand devait nous conseiller de même à l'égard des puissances scandinaves, dont la position géographique rendait, pour les deux parties, l'amitié précieuse, l'hostilité inquiétante. Parmi les traditions qui liaient à la cour de Saint-Pétersbourg les cabinets de Stockholm et de Copenhague, le souvenir des neutralités armées de 1780 et de 1800 tenait une place

principale. Ces deux grandes manifestations étaient nées sous l'influence de la politique russe. Si nous reproduisions les prétentions qui les avaient provoquées autrefois, n'était-il pas à craindre que nous ne dussions soulever les mêmes résistances et pousser dans les bras de notre ennemi les peuples qui avaient obéi à ses instigations ?

Les États-Unis de l'Amérique du Nord étaient pour nous l'objet de préoccupations semblables ; la Russie captait leur faveur, et elle était d'accord avec eux sur l'interprétation des lois de la mer. De tout temps, la grande puissance du nouveau monde avait soutenu les droits des pavillons neutres. Fallait-il offrir à nos ennemis l'occasion de la rallier à eux sur ce terrain et de la tourner contre nous ?

L'Angleterre n'était pas insensible à ces considérations, mais elle les combattait en alléguant l'impossibilité où serait son gouvernement d'abandonner, en face du pays, les règles réputées inviolables de son vieux droit maritime.

Cependant, le Danemarck et la Suède avaient officiellement notifié leur intention de demeurer neutres en cas de conflit. Le ministre des affaires étrangères, écrivant à Londres au sujet de cette communication, en prenait texte pour presser le cabinet britannique de résoudre les questions qu'elle posait.

"Tâchez de connaître a cette occasion," mandait-il le 4 janvier 1854 à notre ambassadeur, "quelles sont les dispositions actuelles du gouvernement anglais en ce qui concerne les neutres. C'est une matière sur laquelle a régné jusqu'ici, entre l'Angleterre et nous une grande différence d'opinions. J'ai d'ailleurs sujet de penser, d'après un commencement de polémique que j'ai remarqué dans les journaux anglais, que le commerce serait peu favorable à l'application des anciennes doctrines du gouvernement britannique dans toute leur rigueur. Je vous prie, tout en évitant d'entamer une discussion prématurée sur la question de droit, de recueillir sur ce point des informations aussi exactes que faire se pourra, et de chercher à savoir notamment à quelles obligations le cabinet de Londres croit le Danemarck et la Suède tenus envers lui dans l'exercice de la neutralité. Lord Clarendon n'ignore pas, sans doute, que le Russie éprouve un vif mécontentement de l'attitude de ces deux puissances, et en particulier de celle de la Suède. C'est une raison de plus pour nous, ce me semble, de croire à la sincérité des résolutions des cabinets de Copenhague et de Stockholm, et de ne pas augmenter, par de trop grandes exigences, les embarras de leur position."

Le 12 janvier, le ministre écrivait encore, en transmettant à Londres une copie de la dépêche qu'il se proposait d'adresser à Stockholm et à Copenhague :

"J'attacherais un grand prix à ce que la réponse de lord Clarendon fût conçue, autant que possible, dans le même sens que la nôtre et pût tranquilliser entièrement la Suède et le Danemarck sur l'exercice de leur neutralité. Je sais que le gouvernement anglais n'est pas préparé à se départir de ses anciennes maximes en matière de droit maritime ; mais je désire, qu'au moins dans la pratique, il mette sa conduite d'accord avec la nôtre, si la guerre vient à éclater. Tout prouve, en effet, que ce sera le meilleur moyen d'accroître les sympathies que nous témoignent les deux cours scandinaves, et à cause de notre bon droit dans la question générale et à cause des exigences blessantes que le cabinet de Saint-Pétersbourg a mises en avant auprès d'elles. La neutralité même est un acte d'indépendance envers la Russie que leurs liens de famille et les événements de ces dernières années rendent très-méritoire, et dont leur puissant voisin ne se dissimule pas le caractère peu bienveillant. C'est, donc, une attitude qui peut les rapprocher plus encore de nous dans certaines éventualités, et qu'il faut ménager avec soin. Trop de rigueur, au contraire, dans la surveillance des relations commerciales, que le pavillon marchand de la Suède et du Danemarck tâchera d'entretenir avec les ports russes, pourrait refroidir des sentiments qui sont en ce moment tels que nous devons les désirer, et amener des discussions d'une nature fâcheuse. Je sais que la Suède compte avec confiance sur la liberté du commerce sous pavillon neutre."

Ce qui touchait particulièrement le gouvernement anglais, c'était la crainte de voir l'Amérique incliner contre nous et prêter à nos ennemis le concours de ses hardis volontaires. La population maritime des États-Unis, leur marine entreprenante, pouvaient fournir à la Russie les éléments d'une flotte de corsaires qui, attachés à son service par des lettres de marque, et couvrant les mers comme d'un réseau, harcèleraient et poursuivraient notre commerce jusque dans les parages les plus reculés. Pour prévenir ce danger, le cabinet de Londres tenait beaucoup à se concilier les bonnes dispositions du gouvernement fédéral. Il avait conçu l'idée de lui proposer, en même temps qu'au gouvernement français et à tous les états maritimes, la conclusion d'un arrangement ayant pour but la suppression de la course et permettant de traiter comme pirate quiconque, en temps de guerre, serait trouvé muni de lettres de marque.

Ce projet, qui fut abandonné dans la suite, témoigne de l'inquiétude éprouvée par les Anglais. Nous pensions comme eux sur la course, pratique barbare, qui masquait trop souvent, sous une apparence de dévouement patriotique, la violence excitée par l'appât du lucre. À des époques antérieures, justifiée par l'acharnement des guerres, elle avait pu, du sein de nombreuses iniquités, faire jaillir quelques actions héroïques, transmettre même à l'histoire quelques noms glorieux. Mais nous la considérions comme incompatible désormais, avec les usages des nations civilisées qui ne peuvent souffrir que des particuliers soient armés des droits de la guerre, et qui en réservent les redoutables ap-

plications aux pouvoirs publics des états constitués. Toutefois, avant de fixer irrévocablement notre opinion sur ce point par des engagements internationaux, nous désirions assurer une consécration semblable à d'autre progrès de la législation des mers. La conduite commune, que nous proposions au gouvernement britannique d'observer dans notre lutte contre la Russie, nous paraissait le meilleur acheminement vers cet ensemble de réformes qui, dans notre pensée, étaient corrélatives entre elles.

Si, en fait, dans le système que nous proposions, nous avions moins de concessions à offrir que nous n'en demandions à l'Angleterre, ce n'était pas l'effet d'une prétention arbitraire de notre part; la nature même des choses le voulait ainsi. Pour aboutir à une conciliation entre deux pratiques divergentes, il fallait, nécessairement, que sur chaque point en discussion ce fût la plus libérale qui prévalût. Il n'y avait pas là seulement une question d'intérêt ou du convenance, mais une loi logique. L'Angleterre ne pouvait nous demander de nous arroger tout d'un coup, pendant la guerre que nous ferions en commun, de pouvoirs que nous contestions en principe et dont l'exercice à l'égard des tiers était réprouvé par nous depuis des siècles. Eût-elle admis elle-même que nous lui disions, par exemple: Si vous voulez que nous nous mettions d'accord, il faudra que vous consentiez à saisir, comme nous, les biens neutres sous pavillon ennemi? À un pareil langage, les hommes d'état qui dirigeaient les conseils de la reine Victoria n'eussent pas manqué de répondre: Mais les biens neutres sont, d'après nos théories, inviolables partout et en tout état de cause; nous l'avons proclamé mille fois; nous ne saurions aujourd'hui, par amour de la symétrie, usurper un droit dont nous ne reconnaissons pas l'existence.

Au contraire, que les deux nations s'entendissent pour se relâcher de concert de la rigueur de leurs usages particuliers sur les points où l'une d'elles avait adopté une jurisprudence plus favorable aux tiers, et cette règle si simple tranchait toutes les diffi-
[55] cultés. La *France et l'Angleterre se rapprochaient, sans se dédire; leur tolérance n'infligeait aucun blâme à leurs principes, aucun démenti à leurs déclarations antérieures. Une pente naturelle devait donc les amener à se rencontrer dans cette voie, et tout le poids de nos raisonnements résidait dans la force même de la position que, dès le début de la négociation, nous avions reconnue et prise.

L'intimité qui, de jour en jour, se resserrait plus étroitement entre nos alliés et nous, garantissait d'ailleurs à nos suggestions plus de crédit et nous autorisait à les présenter d'une manière plus pressante. Au moment même où se traitait cette affaire, les deux gouvernements se donnaient un gage mutuel de leur union par les instructions qu'ils adressaient à leurs agents consulaires et diplomatiques, aux gouverneurs de leurs colonies, aux commandants et aux officiers de leurs marines respectives, afin d'étendre indistinctement aux sujets anglais et français, dans toutes les parties du monde, leur protection réciproque. Ainsi, aux yeux des nations étrangères, la France et l'Angleterre confondaient leurs drapeaux. Une telle solidarité rendait plus urgente la nécessité d'une entente complète sur les principes de leur action combinée. D'autre part, l'anxiété des intérêts privés, la pression de l'opinion publique, les besoins impérieux du commerce exigeaient qu'on mît fin à toute incertitude. Dans les derniers jours de février, des interpellations eurent lieu au parlement britannique. Un des ministres de la couronne répondit que la reine ferait publiquement connaître ses intentions à l'égard des neutres avant toute déclaration de guerre. À cette occasion, le ministre français, avec une nouvelle insistance, écrivait à notre ambassadeur, en date du 1er mars:

"Je regretterais vivement que l'Angleterre procédât à une mesure de cette importance sans se concerter préalablement avec nous. Il serait du plus mauvais effet, au début d'une guerre faite en commun, que les deux pays parussent divisés sur des théories, lorsque dans la pratique ils doivent agir ensemble. Veuillez appeler de nouveau l'attention de lord Clarendon sur cet objet. Il me semble que, sans réveiller une controverse qui alarmerait des intérêts que tout nous conseille de ménager avec soin, il serait suffisant de rédiger pour les commandants de nos bâtiments des instructions strictement calculées d'après les nécessités de la guerre actuelle et de nature à rassurer les neutres, particulièrement ceux que les habitudes de leur commerce portent à naviguer de préférence dans la mer Noire ou dans la mer Baltique. De cette façon, l'Angleterre et la France réservaient chacune leur doctrine, et leur action se confondait dans une même pratique, que l'on serait toujours maître de rendre plus sévère, pendant le cours des hostilités, si les circonstances venaient à l'exiger."

À cette dépêche, qui résumait les conversations de ministre des affaires étrangères avec l'ambassadeur anglais à Paris, le gouvernement britannique répondait que les avocats de la couronne avaient été consultés, qu'on avait débattu à plusieurs reprises la ligne de conduite qu'il convenait d'adopter à l'égard des neutres, qu'avant peu l'on serait en mesure de prendre une décision, mais qu'on ne le ferait certainement pas sans se concerter avec le gouvernement de l'empereur; il y avait lieu d'espérer qu'on pourrait admettre quelques principes généraux se rapprochant de ceux que la France avait appliqués de tout temps: enfin, si l'on ne pouvait s'entendre sur une énonciation de principes, on tâcherait au moins de rédiger, pour les commandants des forces navales, des instructions conçues dans les termes indiqués par nous.

Quelques jours après, le 14 mars, lord Cowley communiquait au ministre des affaires étrangères, à Paris, un projet de déclaration dans lequel le gouvernement britannique, après avoir réservé la question de droit, s'engageait à borner la visite en haute mer à la vérification de la nationalité du navire et aux mesures requises pour constater s'il n'y avait à bord ni contrebande de guerre, ni correspondances de l'ennemi; il admettait, du reste, que le pavillon neutre couvrirait la marchandise ennemie, tout en laissant intacte sous pavillon ennemi la marchandise neutre; il manifestait enfin l'intention de ne pas délivrer de lettres de marque, et de traiter comme pirates tous ceux de ses sujets qui en accepteraient.

Ce document, qui, avant d'être envoyé à Paris, avait subi plusieurs modifications, afin d'arriver à une plus grande conformité avec les doctrines françaises, contenait des concessions importantes. La plus essentielle était le respect, tout nouveau de la part de l'Angleterre, de la marchandise ennemie sous pavillon neutre. Éclairé sur le côté politique de la question, le gouvernement britannique avait senti la nécessité de rassurer les puissances neutres, qu'effrayait le souvenir de la violation constante de leur pavillon par ses croiseurs pendant les dernières guerres, et de toutes les vexations qu'avait entraînées l'exercice du droit de visite poussé à outrance. Quand ce droit, en effet, impliquait la recherche de toutes les marchandises auxquelles pouvait être attribuée une provenance ennemie, il revêtait la forme la plus intolérable, et l'emploi qu'en avait fait la Grande-Bretagne était de nature à répandre l'effroi parmi les nations non-belligérantes. Restreint aux termes où le cabinet de Londres voulait le maintenir, il pouvait encore, dans la pratique, laisser la porte ouverte à bien des abus de la force, et nous jugions qu'il devait être entouré de garanties plus protectrices pour les neutres.

C'est sur ce point que porta principalement la discussion entre le ministre français et l'ambassadeur d'Angleterre. À la suite de ce débat, qui s'étendit également sur plusieurs articles de détail, la déclaration anglaise, refondue, fut renvoyée à Londres le 20 mars, sous forme d'un projet nouveau que pourrait s'approprier, pour la circonstance actuelle, chacun des deux gouvernements si le cabinet britannique en venait à partager notre manière de voir.

"Ce projet," écrivait le ministre dans la lettre qui en accompagnait l'envoi, "a été préparé entre lord Cowley et moi dans des entretiens confidentiels sur cette matière délicate. Je viens d'en donner communication à M. le ministre de la marine, en le priant de me faire connaître son opinion le plutôt possible. Nous avons, ce me semble, à opter entre une déclaration commune qui, s'appliquant uniquement à la présente guerre, n'engagerait pas les maximes de l'Angleterre, et dans laquelle nous n'abandonnerions pas les nôtres, ou deux déclarations simultanées qui, annonçant les mêmes intentions, quant à la conduite et aux instructions données aux commandants des forces navales respectives, réserveraient également la différence de nos doctrines; mais j'inclinerais pour une seule déclaration, qui serait plus satisfaisante pour les neutres, et qui, en constatant mieux notre parfait accord, frapperait plus fortement les esprits."

Le 24 mars, le ministre des affaires étrangères écrivait encore en ces termes au comte Walewski, notre ambassadeur à Londres:

"Les observations que lord Cowley m'a présentées sur le projet de déclaration relatif à la neutralité, que j'ai eu l'honneur de vous adresser le 20 de ce mois, donnent lieu, de notre part, à certaines remarques, sur lesquelles je crois utile d'appeler votre attention.

"Pour parvenir à faire une déclaration commune, on devait se borner à formuler ce que les deux nations entendaient admettre ou repousser pendant la durée de la guerre actuelle. Les théories de la France et de l'Angleterre étant différentes, il était indispensable d'éviter tout ce qui pouvait ressembler à une sorte de déclaration de principes. Le projet que je vous ai communiqué était une transaction entre les systèmes des deux pays; il ne faisait prévaloir ni l'une ni l'autre de ces doctrines.

"Si le gouvernement anglais désire que sa déclaration indique 'qu'il réserve l'application de tel ou tel principe,' ou 'qu'il renonce, quant à présent, à l'exercice de tel ou tel droit,' en indiquant ainsi qu'il considère ce principe comme reconnu, et ce droit comme lui appartenant, il faudra nécessairement en venir à faire deux
[56] déclarations, semblables quant au * fond, mais différentes quant à la forme; car, évidemment, le gouvernement français ne peut dire 'qu'il renonce à l'exercice d'un droit' dont il a toujours contesté l'existence, ou 'qu'il réserve l'application d'un principe,' quand il a sans cesse refusé de le reconnaître. Ceci, du reste, n'est qu'une simple question de forme; ce qui importe le plus en réalité, c'est que les deux gouvernements soient d'accord quant aux règles pratiques qui devront être appliquées.

"Je passe à l'examen de deux points importants, et sur lesquels je vous invite à appeler plus spécialement l'attention de lord Clarendon.

"Le premier est relatif aux marchandises neutres saisies à bord de navires ennemis. Le projet que je vous ai envoyé déclarait que la confiscation n'en serait pas prononcée; c'est là une question très-grave en elle-même, très-délicate surtout pour le gouvernement français. Il est à craindre, en effet, que les marchandises ennemies chargées à bord de navires ennemis n'arrivent à naviguer sans danger, au moyen de neutralisations simulées; et, d'autre part, les lois françaises prononçant la confiscation des navires ennemis sans admettre d'exception pour les marchandises neutres, il faudra, peut-être,

une loi nouvelle pour enlever aux marins, qui ont des droits à exercer, cette part souvent très-considérable de leurs prises. C'est une question, du reste, au sujet de laquelle j'aurai à m'entendre, comme sur toutes les autres, avec M. le ministre de la marine. Mais je ne puis le consulter utilement sur ces divers points que lorsque j'aurai été officiellement et complètement informé des propositions définitives du cabinet britannique.

"Le gouvernement anglais paraît insister pour que le projet de déclaration défende aux neutres de se livrer, pendant la guerre, soit au commerce colonial, soit au cabotage, s'ils sont réservés pendant la paix.

"Je n'ai pas besoin de vous rappeler avec quelle persistance le gouvernement français, à toutes les époques, a soutenu les réclamations nombreuses et vives que l'adoption de cette règle souleva, dès l'origine, de la part des nations neutres. La France est donc liée par ses précédents historiques; elle l'est également par des traités faits avec plusieurs états, dont elle s'est engagée à laisser les navires naviguer librement en temps de guerre, même entre deux ports ennemis. Comment pourrions-nous aujourd'hui nous associer à une disposition qui refuserait aux neutres un droit que nous avons toujours revendiqué pour eux, et que nous avons même proclamé solennellement dans nos traités?

"Je n'indique qu'en passant l'intérêt particulier que cette question présente pour la France, et les conséquences différentes que l'adoption de la règle proposée aurait pour les deux pays. L'Angleterre, qui admet en tout temps les pavillons étrangers à prendre part au cabotage et au commerce des colonies, n'a rien à craindre de l'application qui pourrait lui en être faite; la France, au contraire, qui réserve encore ces navigations au pavillon national, pourrait avoir éventuellement à souffrir de la règle qu'on l'invite à proclamer.

"Je me demande, du reste, s'il y a un intérêt considérable, pour la guerre actuelle, à insérer dans la déclaration une disposition semblable. La Russie, il est vrai, réserve en temps de paix le cabotage et le commerce des colonies; mais, dans la Baltique, le cabotage ne se fait qu'entre un petit nombre de ports, qu'il sera facile aux flottes de fermer complètement au moyen d'un blocus effectif. Il en est de même de la mer Noire, sur laquelle les flottes combinées dominent. Quant au commerce de l'Amérique russe, qui est le monopole d'une compagnie, s'il vient à être exercé par les vaisseaux des États-Unis, il en pourrait résulter, dans un intérêt minime, des complications graves que la France a d'autant plus le désir d'éviter sur cette question, que son traité de 1778 avec les États-Unis est un de ceux où le droit des neutres de se livrer, pendant la guerre, aux commerces réservés a été formellement stipulé.

"Je me plais à reconnaître, du reste, tous les efforts que le gouvernement anglais a fait pour se rapprocher autant que possible des doctrines de la France, et vous pouvez assurer de nouveau lord Clarendon de notre désir sincère d'entrer dans la voie des transactions mutuelles. Nous en avons donné la preuve sur la question des marchandises neutres à bord des navires ennemis. Mais, en ce qui concerne le droit des neutres de se livrer aux navigations réservées, lord Clarendon reconnaîtra, j'en suis certain, que la concession ne saurait venir de notre part. Le gouvernement anglais, en effet, qui regarde la prohibition comme fondée sur le droit des gens, peut bien renoncer à s'en prévaloir, tout en réservant son système, tandis que la France ne saurait proclamer une règle que, d'après ses principes, elle ne se croit pas autorisée à appliquer.

"Telles sont les observations que je vous prie de présenter à lord Clarendon. J'espère qu'elles le détermineront à écarter de la déclaration anglaise une règle que la France ne pourrait faire figurer dans la sienne. Jusqu'ici les deux gouvernements ont saisi toutes les occasions de faire ressortir la solidarité complète qui unit si heureusement les deux nations; il importe que cette même pensée continue de se révéler jusque dans les règles à établir pour les questions secondaires. Si, sur certains points, les deux pays ne peuvent adopter les mêmes principes, il me paraît du moins très-désirable qu'ils évitent, surtout dans une déclaration solennelle, d'en proclamer de différents.

"Vous voudrez bien me faire connaître, le plus tôt qu'il vous sera possible, le résultat de l'entretien que vous aurez avec lord Clarendon."

Les points délicats touchés dans cette dépêche faisaient beaucoup hésiter l'Angleterre. Cependant les événements marchaient, le temps pressait. Le 26 mars, le ministre des affaires étrangères signalait, dans une dépêche télégraphique, la nécessité d'une prompte solution. "Insistez," mandait-il à M. le comte Walewski, "sur les très-graves inconvénients d'une déclaration séparée qui ferait douter de l'entente des deux pays, alarmerait les neutres et amènerait d'involontaires et inévitables conflits entre les commandants. Si lord Clarendon accepte le principe d'une déclaration commune, sauf à régler le détail par des instructions séparées, priez-le de me faire communiquer son projet, pour que je puisse m'entendre avec le ministre de la marine et arriver à une conclusion."

Reprenant sa pensée dès le lendemain pour la développer, voici ce qu'écrivait le ministre en date du 27:

"Mes entretiens avec lord Cowley ont été consacrés, depuis quelque temps, à l'examen de l'importante et délicate question des droits des neutres. Lord Clarendon a dû être

informé presque journellement de l'objet de ces discussions, et je sais que M. l'ambassadeur d'Angleterre lui a déjà transmis le projet de déclaration dont nous avons posé les bases ensemble. Ce ministre se trouvait ainsi tout préparé à recevoir la communication que je vous chargeais de lui faire par ma dépêche du 24 de ce mois, et dont le but était de l'amener à émettre une opinion définitive sur des points qu'il a eu le temps d'examiner. Ma dépêche télégraphique d'hier vous aura prouvé l'intérêt que le gouvernement de l'empereur attache à sortir d'une indécision qui, aujourd'hui que l'état de guerre est proclamé, ne saurait se prolonger sans les plus graves inconvénients. J'espère que vos efforts auront déterminé le principal secrétaire d'état de sa majesté britannique à renoncer au système pour lequel il avait laissé percer ses préférences, et qui consisterait dans la publication de deux déclarations non-seulement séparées mais distinctes quant aux principes qui y seraient émis ou réservées. Ce n'est qu'avec le plus vif regret que nous verrions l'Angleterre adopter une marche qui, dès le principe même d'une guerre faite en commun, accréditerait l'opinion d'une divergence entre les deux gouvernements et affaiblirait, aux yeux de nos adversaires, l'effet politique de l'union intime et complète qui a donné à notre diplomatie la force qu'il est maintenant plus nécessaire que jamais de conserver pour nos actes.

"Si de l'ensemble nous descendons aux détails, les dangers ne sont pas moins
[57] grands. Entre la déclara*tion de la France et celle de l'Angleterre, les neutres feront un choix, et nul doute qu'ils ne se rangent plus volontiers autour de la puissance qui, par sa fidélité à des traditions auxquelles ils sont inviolablement attachés, leur apparaîtra comme le champion de leur propre cause. Ne serait-il pas préférable de leur montrer leur sûreté dans l'union des deux marines et d'éviter avec soin de raviver une vieille querelle qui alarmerait leurs intérêts, exciterait leurs passions, et les reporterait, peut-être moralement, dans un autre camp que le nôtre?

"D'un autre côté, et ce n'est pas une des moindres objections à faire au système indiqué par lord Clarendon, comment concevoir qu'en présence de deux déclarations distinctes, établissant une séparation théorique entre les gouvernements, leurs amiraux et leurs officiers de mer s'entendent dans la pratique? Il surgira entre eux, je ne veux pas dire des conflits, mais des divergences involuntaires et inévitables qui nuiront au succès de leurs opérations.

"Les États-Unis enfin sont prêts, je ne saurais en douter, à revendiquer le rôle que nous déclinerions et à se faire les protecteurs des neutres, qui eux-mêmes recherchent leur appui. Le cabinet de Washington nous propose en ce moment de signer un traité d'amitié, de navigation et de commerce où il a inséré une série d'articles destinés à affirmer avec une autorité nouvelle les principes qu'il a toujours soutenus et qui ne diffèrent pas des nôtres. Le principal secrétaire d'état de sa majesté britannique comprendra que nous n'aurions aucun moyen de ne pas répondre favorablement à l'ouverture qui nous est faite, si la France et l'Angleterre, bien que se trouvant engagées dans une même enterprise, affichaient publiquement des doctrines opposées. Que les deux gouvernements, au contraire, s'entendent sur les termes d'une déclaration commune, et nous pourrons alors ajourner l'examen des propositions des États-Unis. Il me paraît difficils que ces considérations ne frappent pas l'esprit de lord Clarendon, et j'espère qu'il se décidera à accepter un project qui, se bornant à tenir compte des conditions de la guerre actuelle, laissera de côté des principes qu'il est d'autant moins opportun de soulever ou de rappeler que leur application serait inutile, et dont les effets, comme dans la question du cabotage sur les côtes des pays ennemis, par exemple, peuvent être remplacés par l'emploi de mesures pratiques au sujet desquelles tout le monde est d'accord. Les instructions données aux commandants des bâtiments de guerre des deux pays suppléeraient naturellement à ce qu'il y aurait d'incomplet dans la déclaration identique; il serait toutefois nécessaire, même dans le cas où ces instructions devraient conserver quel ques traces des doctrines particulières de la France et de l'Angleterre, qu'elles fussent concertées en commun, et vous donnerez à lord Clarendon l'assurance que M. le ministre de la marine employerait tous ses soins à se rapprocher autant que possible de l'amirauté britannique dans les directions qu'il transmettrait à nos amiraux."

Le même jour, le ministre adressait à Londres un nouveau projet de déclaration, précédé d'un court préambule, et où il s'était efforcé de se rapprocher le plus possible, pour la forme comme pour le fond, des idées exprimées par l'Angleterre.

"Cette déclaration," écrivait-il, "que j'ai concertée définitivement avec M. le ministre de la marine, ne consacre que les principes essentiels sur lesquels il importe de constater l'accord des deux gouvernements; des instructions séparées, qui pourront d'ailleurs être réciproquement communiquées, règleront l'application de ces principes suivant la législation de chacun des deux pays et résoudront, sous ce point de vue spécial, les difficultées sur lesquelles la divergence des doctrines respectives ne permet pas un accord patent, du moins immédiat."

Cet envoi se croisa en route avec un contre projet dans lequel les Anglais, malgré nos observations, maintenaient l'interdiction du commerce neutre "*in transitu*" entre deux ports appartenant à l'ennemi," et lord Cowley, le 28 mars, faisait savoir que cette rédaction était définitivement adoptée par le conseil de sa majesté britannique.

Elle était inacceptable pour nous. Le jour même le ministre des affaires étran-

gères constatait dans ces termes l'impossibilité de s'entendre: "Je regrette," écrivait-il à Londres, "qu'en rappelant dans cet acte des théories qui ne sont pas les nôtres, et en y insérant l'interdiction du commerce de cabotage, ainsi que le principe de la limitation du commerce des neutres au seul commerce permis en temps de paix, le gouvernement britannique nous place dans la nécessité de faire une déclaration séparée. Cette déclaration comprendra tous les points indiqués dans le projet joint à ma dépêche d'hier, sauf le préambule, dont j'ai fait l'objet d'un rapport à l'empereur. J'ai obtenu, ainsi que vous le verrez, l'assentiment de M. le ministre de la marine à la règle qui exempte de la saisie la marchandise neutre à bord d'un navire ennemi. Lord Cowley m'a communiqué, en même temps, le projet des instructions destinées aux commandants des bâtiments de guerre anglais, en m'annonçant qu'il était sur le point d'être signé. Dès lors, il est superflu de relever les questions qu'il tend à résoudre dans un sens opposé à nos principes et à notre legislation. Il ne nous reste qu'a rédiger, à notre point de vue, les instructions destinée à nos propres croiseurs. Je viens de prier M. le ministre de la marine de préparer ce travail que j'aurai soin de vous communiquer pour être porté à la connaissance du gouvernement britannique. J'ai l'espoir que, dans l'exécution, cette divergence des instructions n'entraînera pas d'inconvénients graves, car nous sommes d'accord sur les points les plus essentiels, et je reconnais particulièrement l'esprit de libéralité avec lequel le gouvernement anglais s'est rapproché de nos principes en matière de blocus. Cependant, si quelque dissentiment se présentait, je n'aurais qu'à regretter d'autant plus les retards qu'ont éprouvés la préparation et la communication des projets sur lesquels une entente préalable aurait été si désirable."

C'était un vif désappointement pour les deux gouvernements que de voir échouer leur entente par suite d'une dissidence d'un intérêt médiocre pour la conduite de la guerre actuelle. Mais la France était liée par des engagements positifs avec d'autres puissances, et il lui était juridiquement impossible, quand même elle eût été moralemant libre, de se départir de la position où elle s'était retranchée. Dans les matières où sa latitude d'action n'était pas restreinte à l'avance, elle avait témoigné de son empressement à aller au-devant de son alliée en élargissant sa législation ancienne. Ainsi tous les projets envoyés à Londres prononçaient l'abolition de la course, et, abandonnant les usages séculaires de notre marine, nous venions de consacrer définitivement l'immunité de la propriété neutre sous pavillon ennemi. Nous avions donné la pleine mesure de nos dispositions conciliantes; il ne nous était plus permis de la dépasser.

Bien que les déterminations notifiées par l'ambassadeur d'Angleterre parussent irrévocables, le cabinet britannique se rendait bien compte des embarras de la situation. Il était très-sensible aux inconvénients que devait avoir la promulgation simultanée de deux règles différentes, destinée à être parallèlement appliqués aux nations neutres. Au dernier moment le conseil fut assemblé de nouveau. Après une longue discussion, il fut décidé que l'article qui avait provoqué nos objections serait rayé de la déclaration anglaise.

Dès lors l'entente était complète. Pour arriver à une identité absolue, il nous était facile de plier notre projet aux formes traditionelles que doivent revêtir les ordres en conseil émis au nom de la reine du royaume uni. En quelques heures, grâce au télégraphe, les deux cabinets purent constater leur accord et aviser à la publication immédiate de leur déclaration commune. Le texte français, précédé d'un rapport à l'empereur, parut au *Moniteur* du 30 mars 1854, avec la date du jour précédent. On voit qu'il n'y avait pas eu de temps de perdu. Voici les deux piéces:

[58] **Rapport à l'empereur.*

"PARIS, 29 *mars* 1854.

"SIRE: À une époque où les relations maritimes et les intérêts commerciaux occupent une si large place dans l'existence des peuples, il est du devoir d'une nation qui se trouve contrainte à faire la guerre de prendre les mesures nécessaires pour en adoucir autant que possible les effets, en laissant au commerce des peuples neutres toutes les facilités compatibles avec cet état d'hostilité auquel ils cherchent à demeurer étrangers.

"Mais il ne suffit pas que les belligérants aient la pensée intime de respecter toujours les droits des neutres; ils doivent de plus s'efforcer de calmer paravance ces inquiétudes que le commerce est toujours si prompt à concevoir, en ne laissant planer aucun doute sur les principes qu'ils entendent appliquer.

"Un réglement sur les devoirs des neutres pourrait paraître une sorte d'atteinte à la souveraineté des peuples qui veulent garder la neutralité; une déclaration spontanée des principes auxquels un belligérant promet de conformer sa conduite semble, au contraire, le témoignage le plus formel qu'il puisse donner de son respect pour les droits des autres nations.

"C'est dans cette pensée, qu'après m'être concerté avec le gouvernement de sa majesté britannique, j'ai l'honneur de soumettre à la haute approbation de votre majesté la déclaration suivante.

"Je suis, avec respect, sire, de votre majesté le très-humble et très-obéissant serviteur et fidèle sujet,

"DROUYN DE LHUYS.

"Approuvé :

"NAPOLÉON."

"Déclaration relative aux neutres, aux lettres de marque, etc.

"S. M. l'empereur des Français, ayant été forcé de prendre les armes pour soutenir un allié, désire rendre la guerre aussi peu onéreuse que possible aux puissances avec lesquelles elle demeure en paix.

"Afin de garantir le commerce des neutres de toute entrave inutile, sa majesté consent, pour le présent, à renoncer à une partie des droits qui lui appartiennent, comme puissance belligérante, en vertu du droit des gens.

Il est impossible à sa majesté de renoncer à l'exercice de son droit de saisir les articles de contrebande de guerre et d'empêcher les neutres de transporter les dépêches de l'ennemi. Elle doit aussi maintenir intact son droit, comme puissance belligérante, d'empêcher les neutres de violer tout blocus effectif qui serait mis, à l'aide d'une force suffisante, devant les forts, les rades ou côtes de l'ennemi.

"Mais les vaisseaux de sa majesté ne saisiront pas la propriété de l'ennemi chargée à bord d'un bâtiment neutre, à moins que cette propriété ne soit contrebande de guerre.

"Sa majesté ne compte pas revendiquer le droit de confisquer la propriété des neutres, autre que la contrebande de guerre, trouvée à bord des bâtiments ennemis.

"Sa majesté declare en outre que, mue par le désir de diminuer autant que possible les maux de la guerre et d'en restreindre les opérations aux forces régulièrement organisées de l'état, elle n'a pas, pour le moment, l'intention de délivrer des lettres de marque pour autoriser les armements en course."

Le jour où, des deux côtés de la Manche, cette déclaration fut rendue publique, le ministre des affaires étrangères écrivait à Londres :

"Je me félicite vivement de la preuve éclatante que la France et l'Angleterre viennent de donner de leur bon accord dans la question si importante des droits réservés aux neutres pendant la guerre actuelle. L'harmonie qui s'est établie entre les deux cabinets sur un point où l'on aurait pu croire qu'il leur serait, malgré leur sincère envie d'y parvenir, extrêmement difficile de s'entendre, produira partout la meilleure impression, et conciliera aux puissances auxquelles appartient l'initiative de cette généreuse résolution les sympathies des nations commerçantes dans le monde entier. Veuillez dire à lord Clarendon que le gouvernement de l'empereur apprécie comme il le doit l'esprit qui a présidé aux délibérations du gouvernement de la reine Victoria sur un sujet qui lui tenait particulièrement à cœur, et qu'il en considère le règlement, dans les termes où il s'est fait, comme un des meilleurs résultats de l'intime alliance des deux pays."

La confiance exprimée dans cette lettre ne fut pas déçue. L'accord si nouveau de la France et d'Angleterre sur les règles de droit maritime fut salué avec joie, par les neutres, comme l'aurore d'un jour de justice et de réparation. Placés à l'abri des violences de la guerre, ils n'avaient plus à craindre d'être entraînés dans la querelle d'autrui, et ils demeuraient libres de poursuivre en paix, au milieu de combats auxquels ils étaient étrangers, leur commerce accoutumé, pourvu qu'aucune fraude n'appelât sur eux la sévérité des belligérants.

Les alliés, en notifiant aux divers gouvernements les dispositions qu'ils avaient adoptées, rappelèrent que le strict accomplissement des devoirs de la neutralité était la condition et la garantie du maintien des avantages que ces dispositions conféraient aux neutres. Tel était l'objet de la circulaire suivante, qui fut adressée par le ministre des affaires étrangères à tous les agents de son département accrédités auprès des puissances non-engagées dans la lutte. Elle porte la date du 30 mars :

"Monsieur : Le Moniteur de ce jour publie la déclaration du gouvernement français au sujet des neutres, ainsi que le rapport que j'ai présenté à l'empereur en la soumettant à sa haute approbation. Vous trouverez ci-jointes copies de ces deux documents.

"Le gouvernement britannique a promulgué de son côté, la même déclaration.

"Au moment où les deux états prennent les armes pour la défense commune d'un allié, ils ne pouvaient donner une preuve plus éclatante de la parfaite conformité de leurs sentiments, et de l'esprit de solidarité qui les unit, qu'en adoptant les mêmes résolutions dans une matière sur laquelle jusqu'ici leurs principes avaient été si différents.

"Pénétré de cette sollicitude que la France a toujours témoigné pour les neutres, le gouvernement de l'empereur s'était dès longtemps préoccupé des questions graves que la neutralité soulève, pour en préparer la solution dans le sens le plus favorable aux intérêts des peuples avec lesquels il demeure en paix. Je m'empresse de reconnaître qu'il a trouvé le gouvernement britannique animé des mêmes désirs, et déjà pénétré de la pensée de laisser les neutres en possession de tous les avantages que les nécessités indispensables de la guerre ne feraient point un devoir absolu de restreindre.

"C'est cette communauté de vues qui a dicté la déclaration adoptée par les deux

gouvernements; et, je n'hésite pas à le dire, jamais un document de cette nature n'a été conçu dans des termes aussi favorables.

"L'intention de ne point délivrer de lettres de marque y est officiellement annoncée;

"La nécessité du blocus effectif est admise:

"Le pavillon neutre couvrira la marchandise, et pourtant la marchandise neutre restera libre sous pavillon ennemi.

"Tels sont les avantages qui vont être assurés au commerce pendant la guerre: et même lorsqu'elle sera terminée, cette déclaration commune demeurera comme un précédent considérable acquis à l'histoire de la neutralité.

"Mais, si l'union intime de la France et de l'Angleterre a permis de consacrer un système aussi avantageux pour les nations neutres, il doit en résulter pour celles-ci une obligation plus stricte de respecter d'une manière complète les droits des belligérants. Nous avons donc raison d'espérer que les gouvernements neutres non-seulement ne feront aucun acte qui puisse présenter un caractère hostile, mais qu'ils s'empresseront de prendre toutes les mesures nécessaires pour que leurs sujets s'abstiennent de toute entreprise contraire aux devoirs d'une rigoureuse neutralité.

"Je vous adresserai incessamment un projet de note, dont la rédaction aura
[59] été concertée avec le gouvernement de sa majesté britannique, pour notifier la déclaration présente au gouvernement auprès duquel vous êtes accrédité."

Quelques jours plus tard, les pièces qui suivent furent adressées aux mêmes agents:

"PARIS, *le 5 avril* 1854.

"MONSIEUR: J'ai l'honneur de vous transmettre le projet d'une note que vous voudrez bien adresser immédiatement au gouvernement auprès duquel vous êtes accrédité, pour lui faire connaître les principes que la France et la Grande-Bretagne appliqueront aux neutres dans le cours de la guerre actuelle, ainsi que la résolution qu'ont pris les deux gouvernements de ne point délivrer, quant à présent, des lettres de marque.

"Le représentant de sa majesté britannique recevra l'ordre d'adresser au gouvernement de . . une communication analogue.

"Vous voudrez bien me transmettre la réponse du gouvernement de . . dès qu'elle vous sera parvenue, et faire les démarches nécessaires pour qu'elle soit conforme à la juste attente des deux gouvernements."

Projet de note.

"Le soussigné a reçu l'ordre de son gouvernement d'adresser à son excellence sa majesté . . . . la communication suivante:

"S. M. l'empereur des Français et S. M. la reine du royaume uni de la Grande-Bretagne vont se trouver dans la nécessité de recourir à la force des armes pour repousser les agressions dont l'empire ottoman est l'objet de la part du gouvernement de S. M. l'empereur de Russie. Voulant, autant que possible, diminuer pour le commerce les conséquences funestes de l'état de guerre, leurs majestés ont résolu de ne point autoriser la course, quant a présent, par la délivrance de lettres de marque, et de faire connaître, en même temps que cette résolution, les principes qu'elles entendent appliquer à la navigation et au commerce des neutres dans le cours de cette guerre. C'est dans ce but que sa majesté l'empereur des Français a fait publier la déclaration ci-jointe, identique à celle que S. M. la reine du royaume uni de la Grande-Bretagne et d'Irlande a fait publier de son côté.

"En restreignant l'exercice de leurs droits de belligérants dans des limites aussi étroites, les gouvernements alliés se croient fondés à compter sur les efforts sincères des gouvernements qui demeureront neutres dans cette guerre, pour faire observer par leurs sujets ou nationaux les obligations de la neutralité la plus absolue. En conséquence, le gouvernement de S. M. l'empereur des Français a la confiance que le gouvernement de . . . accueillera avec satisfaction l'annonce des résolutions prises en commun entre les deux gouvernements alliés, et voudra bien, par une juste réciprocité, donner des ordres pour qu'aucun corsaire, sous pavillon russe, ne puisse être armé, ni ravitaillé, ni admis avec ses prises dans les ports de . . , et pour que les sujets (ou citoyens) . . s'abstiennent rigoureusement de prendre part à des armements de ce genre ou à toute autre mesure contraire aux devoirs d'une stricte neutralité."

Ainsi, jusque dans les détails de la notification qu'elles firent de concert, la France et l'Angleterre eurent à cœur de manifester par un langage identique leur parfait accord. Cette union intime ne se démentit pas pendant la suite des événements. Si, dans l'application des règles posées en commun, quelques divergences se firent jour encore sur des points secondaires, elles furent facilement aplanies ou demeurèrent sans conséquence. Malgré l'entente générale sur les principes, des opinions ou des habitudes particulières pouvaient, à certains égards, marquer la trace de pratiques si longtemps opposées. Des instructions furent envoyées par les deux gouvernements aux commandants de leurs marines respectives afin d'atténuer les différences qui subsistaient et qui

firent, d'ailleurs, le sujet d'un complément d'explications amicales échangées entre les cabinets de Paris et de Londres.

Les neutres profitèrent largement de toutes les facilités qui leur étaient accordées. Ils n'en abusèrent point, et pendant toute la durée de la guerre la France et l'Angleterre n'eurent pas à regretter leur généreuse initiative. Cette expérience, comme on devait s'y attendre, fut enchanteresse. Le progrès des mœurs secondant la réforme des doctrines, les nouvelles règles éprouvées par la pratique des deux grandes puissances maritimes furent universellement acceptées comme un bien pour toutes les nations.

En Angleterre comme en France, les classes commerçantes, loin de voir avec jalousie la sécurité que ce régime libéral donnait à des intérêts rivaux, se félicitaient du développement général des transactions qui en était la conséquence, et sentaient que tous étaient appelés à y trouver également leur avantage. L'exposition universelle de 1855, organizée à Paris pendant que nos armées de terre et de mer combattaient en Crimée et dans la Baltique, fournit, on s'en souvient, une preuve éclatante de la vigueur et du succès avec lesquels les travaux de la paix étaient poursuivis au sein même d'une guerre acharnée. Un tel spectacle était une gloire pour le siècle où il se produisait pour la première fois, et il devait inspirer une juste confiance dans l'avenir des idées dont il signalait le triomphe. De plus en plus, les cruelles nécessités de la guerre étaient circonscrites dans un cercle étroitement tracé en dehors duquel l'humanité pacifique et industrieuse gardait ses droits.

Le système inauguré pour la guerre de 1854 répondait si bien à des besoins communs à tous les peuples, qu'il prit sans difficulté le caractère d'une réforme définitive du droit international. Au congrès de paix réuni à Paris en 1856, les plénipotentiaires qui eurent pour mission de consacrer les résultats de la guerre se trouvèrent naturellement amenés à y comprendre la confirmation des règles qui avaient été observées par les puissances belligérantes à l'égard des neutres. Ce fut l'objet de la déclaration de Paris du 16 avril 1856, conçue en ces termes:

1°. La course est et demeure abolie.

2°. Le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre.

3°. La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi.

4°. Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire maintenus par une force suffisante pour interdire réellement l'accès du littoral ennemi.

À cette déclaration ont accédé toutes les puissances excepté l'Espagne le Mexique, et les États-Unis de l'Amérique du Nord. Les deux premières ne firent des réserves que sur le droit d'armer des corsaires, mais elles donnèrent leur adhésion aux autres articles. Quant aux États-Unis, ils auraient accepté la déclaration tout entière, si l'on y eût ajouté une clause relative à l'inviolabilité de la propriété privée sur mer.

Sauf ces restrictions, les arrangements conclus en 1854 entre l'Angleterre et la France sont tombés dans le domaine public, et placés, désormais, sous l'autorité du droit des gens.

Ce résultat était facile à prévoir. À l'ouverture de la guerre, dans le cours des négociations avec le cabinet de Londres, nous insistions, afin de désarmer sa résistance et de lever ses scrupules, sur le caractère temporaire des concessions que nous lui demandions; mais dans notre pensée ce régime, en apparence transitoire, était destiné à se perpetuer par la force des choses et d'un consentement unanime. En effet, lorsque des intérêts considérables se sont développés, pendant un certain temps, sous l'abri d'un système plus libéral, ils deviennent, à leur tour, les fermes appuis et les invincibles défenseurs du régime qui les à d'abord protégés.

DROUYN DE LHUYS.

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[60] *ITALY.

FLORENCE, *March* 2, 1867.

MY LORD: With reference to your lordship's dispatch, marked circular of February 14, directing me to obtain official information respecting the neutrality laws of Italy, I have the honor to transmit herewith to your lordship copies, accompanied by translations, of the laws in force upon this subject, as well as the code of regulations for the Italian mercantile marine, containing certain rules to be observed by the superintendent of harbors respecting the sojourn in them of belligerent vessels of war, which have been transmitted to me by the Italian minister for foreign affairs.

I have, &c.,

HENRY ELLIOT.

Circular of the minister of marine.

TURIN, *April* 6, 1864.

In transmitting to your excellency the royal decree of to-day's date on the neutrality of the ports of the kingdom, the undersigned thinks it opportune to accompany it with the present circular, which is intended to serve as a rule for the practical application of the regulations contained in the same.

The report to His Majesty, which precedes the decree itself, will make known to your excellency the fundamental principles of the international maritime law on which it is founded, as also the general rules which guide it.

Such rules and such principles having been recognized by the publicists of all nations and of all epochs, are, moreover, borne evidence to by recent and analogous regulations which have emanated from the principal maritime powers during the last few years.

The state of neutrality which the government of the King intend to observe with respect to powers which find themselves in declared hostility to each other, imposes certain obligations on the belligerent parties, obligations which cannot be separated from the analogous rights which accompany them; and therefore, in declaring the duties imposed by the most strict neutrality, it is necessary to mention at the same time the prerogatives which arise from such conditions. Thus, in forbidding Italian subjects from taking part in any way whatsoever to the advantage or disadvantage of the belligerent States; in preventing that in places on the sea-shore any commercial operations should be carried out which could produce harm to the powers which are at war against each other; in forbidding, under pains and penalties, that any citizens of the kingdom should take service on board the belligerent ships, refusing them also, in such a case, any protection on the part of His Majesty's government, and, on the contrary, leaving them under the jurisdiction of the laws of the other parties; it was necessary, on the other hand, to avoid the seas within the territorial jurisdiction of the kingdom serving as a field for hostile operations between the belligerent powers, or the ports and places of anchorage along the extensive Italian coasts serving to afford means of armaments or being used as secure bases for hostile operations.

It having been agreed, recognized, and stipulated by international treaties that foreign subjects ought to submit to all the laws and regulations which relate to public security, and to the police of the country in which they sojourn or are domiciled, it follows as a logical and natural consequence that the laws and prohibitions contained in article 4 ought to be considered to extend to foreign subjects who happen to be in the kingdom.

The law of humanity, which suggests that in cases of danger even an enemy who was harmless should be assisted, finds its application in the 7th article of the accompanying decree. To those ships or privateers of the belligerents who should be driven by stress of weather into the ports of the kingdom, or who should there seek refuge to repair damages, or to procure provisions or commodities, to such ships it is impossible to refuse shelter and assistance. Nevertheless, the duties of humanity are confined to requirements necessary for safety of navigation, and do not extend to any request for means which could in any shape or manner increase the offensive or defensive force of the said ships.

Consequently, if in any port, roadstead, or coast belonging to your excellency there should come any ships of war, or belligerent privateers, for refuge against bad weather, or to repair damages it had suffered, or to procure provisions or materials indispensable for pursuing its voyage with safety, your excellency, in virtue of article 10, could not refuse such requests, but would decline, according to the terms of article 9, to accede to any demand which could in any way increase the means of military offense or defense of the said ships.

The power of landing at or arrival in the harbors or coasts of the kingdom cannot, however, be granted to belligerent ships accompanied by prizes, except in the sole case of stress of weather. In the event of their being in need of repairs or provisions, they must first agree to set their prizes at liberty, and then their requests will be granted, but otherwise every assistance must be refused, the presence of a prize constituting a continuance of hostile operations within the waters under the territorial jurisdiction of a neutral country.

The second paragraph of article 10 provides that a supply of coal can only be granted twenty-four hours after the arrival of the belligerent ship which has made the demand. In this regulation your excellency will perceive that the undersigned has in view to prevent these sort of supplies serving for immediate offensive purposes against ships of the other belligerent party, which might be followed by the one which made the demand for fuel, even though it might have been requested for security of its navigation. The period of twenty-four hours specified in the said article may, in special cases, be extended by the authority of your excellency, but may never be reduced.

The regulation of article 11 of the subjoined royal decree requires, beside its exact observance, that the marine authorities should use all possible care to avoid, in the way they carry it out, any opportunity for immediate hostilities between the ships of

the two belligerent parties. In interpreting the article 11 above mentioned the state of the weather must be taken into consideration in determining the interval allowed to elapse between the departure from port of the first ship and that of the second. The reciprocal conditions of sailing and steam ships must be kept in view, the sailing-ship, in such a case, being first required to depart rather than that one possessed of mechanical motion, except in the event of the former being a mercantile steamer and the latter a public armed ship or a privateer.

On the arrival at anchorage of a ship of war, of whatsoever nation, or in whatsoever locality of the kingdom, a copy of the accompanying royal decree shall be conveyed to it. If the said ship belong to a belligerent power there shall be also given to it a copy of the inclosed schedule, with the request that the various columns may be filled up in the manner indicated. The same system will be followed toward privateers.

A copy of the said schedule will, as soon as it be filled up, be immediately forwarded to the undersigned in the proper way, the captains and officers of the port not omitting individually to inform the proper authorities under whom they are placed in order of departmental seniority.

The presence of considerable maritime forces in certain ports of the kingdom, as indicated by article 12, and specified in article 13, might in some cases hinder the free action of the government, and the undersigned, following the example of the measures prescribed by other powers on this head, proposes that His Majesty should give his assent to the rules laid down in the accompanying articles.

While the rules contained in article 12 should be scrupulously observed, the
[61] naval commandants of the *ports, specified in article 13, must use every precaution in applying them, in order to avoid misunderstandings and to prevent the general maritime regulations from being viewed as bearing a character of mistrust.

Nevertheless the captains of ports, of which mention is made above, upon seeing the approach of a squadron comprising more than three vessels of war, shall be careful not to await their entrance into harbor before communicating to them the disposition aforesaid, but shall meet them outside the harbor as soon as it shall be manifest that they intend to anchor, and thus inform them in good time of the rules which obtain in that port with respect to the presence of foreign naval armaments.

Should the squadron comprise three ships or less, then the captains of the ports, following the directions of article 14, shall go on board of the senior officer's ship, or the man-of-war should she be alone, and communicate to him the provisions of article 12 with respect to the stay of the squadron in the harbor.

From the second paragraph of article 12 your excellency will perceive that with the permission of the government, ships of war, three or less in number, may be allowed to sojourn for a longer period than eight days in the ports mentioned in article 13.

Therefore, should the commander of the squadron express a wish to prolong his stay beyond the period prescribed by the rules, your excellency will inform the undersigned of the same as soon as possible, and await a reply before requesting the commander to take his departure, even though the period of eight days were thereby exceeded.

Your excellency will gather from article 8 that the government are desirous of making an exception to the rules laid down by the royal degree in favor of those vessels of war whose mission is exclusively scientific; and this exception, made some years ago, is to be extended also to vessels belonging to a belligerent state.

This exception refers, however, solely to those vessels whose mission is altogether beyond suspicion, and already recognized by the government by diplomatic means, and has been assented to by them.

In such cases the respective captains of ports will be advised in time by the ministry of marine itself.

Whenever any doubt shall be entertained by the naval authorities as to the interpretation or application of the various cases contemplated in the articles of the said degree, they must refer at once to the ministry in writing, and ask for instructions and explanations.

(Signed) CUGIA.

Report addressed to the King by the minister of marine.

TURIN, *April* 6, 1864.

SIR: The Paris convention of April 16, 1856, has established new bases of public laws in naval war with respect to neutrals and to belligerent powers.

Property belonging to the subjects of a state which remains neutral in war, even if embarked upon hostile ships, is now respected, nor does it constitute any longer, in most cases, prize of either belligerent.

The obligations undertaken by the powers signitary to the above convention, and by the countries adhering to it, not to issue letters of marque to merchant ships, have also modified those principles of maritime law which refer to privateers and their prizes.

These principles, however, intended to diminish the losses sustained by private individuals during a maritime war, were not accepted by all naval powers indiscriminately, and for that reason the laws regarding privateering and its prizes contained in the various codes and regulations of maritime law could not be abrogated, being kept in reserve for such cases as those of a war with one of the countries which had refused its adherence to the principles laid down in the Paris convention.

This explains the motives why the maritime powers who framed these new bases of law should now also issue regulations regarding the armaments of privateers.

The conditions of the portions of North America at war induced, at the commencement of that struggle, the French government to declare in a note dated 10th June, 1861, and also the British government in a letter of 12th January, 1862, from the foreign office to the lords of the admiralty, what principles were to serve as a basis of neutrality to those governments during the disastrous war in America.

Recently, however, and in spite of this declaration, hostile enterprise was carried into the waters of the neutral European powers by certain vessels pertaining to these belligerents, which also sought to repair damages and obtain provisions in neutral ports.

Although the position of this kingdom may exclude the supposition that any of the armed vessels or privateers of the belligerent States of America might ever have occasion to approach the Italian coast under circumstances calculated to cause trouble to a neutral power.

This supposition assumes another aspect when the movements of the ships of war belonging to the northern powers of Europe are considered now even in a state of armed warfare.

These facts will doubtless compel the attention of your Majesty's government to the consequences which may ensue to a neutral state, and also to provide that while the duties of neutrality are observed the rights which such a state insures to the neutral powers be equally respected.

While compiling the project of law which I have now the honor to submit to your Majesty, besides detailing the principles which should regulate the conduct of the maritime authorities, the seafaring population, and your Majesty's subjects to preserve the strict limits of neutrality now to be the guide of the Italian government toward the powers at present at declared war, I think it right to declare what regulations are already in force in many harbors of the kingdom, sanctioned by previous law, and common to all maritime nations, whether as a special right obtaining on certain parts of the coast, (Quale perogativa propria su certi punti speciali delle coste,) or as being recognized by all those who have ever treated of international maritime law.

Whenever your Majesty will approve of the considerations which are the basis of the scheme of the following decree, I would humbly hope that your Majesty will deign to confer upon it your royal sanction.

E. CUGIA,
Minister of Marine.

VICTOR EMANUEL II., ELECT KING OF ITALY.

With reference to the royal patents of 24th November, 1827, which determine port regulations;

With reference to the penal law for the mercantile marine, dated January 15, 1827;

With reference to the royal decree of December 22, 1861, which extends the laws and regulations of the mercantile marine in force in the ancient provinces to all new provinces of the kingdom:

Considering the state of the existing relations between Italy and other maritime states which are in open hostilities;

Considering the rights reserved by international maritime law respecting certain special parts of the sea-board of any maritime state, tending to maintain and guarantee the state of neutrality of that kingdom toward belligerent powers; and to render valid, under all circumstances, those rights which might spring from or be derived from such a state, (of neutrality,) and also to preserve intact its liberty of action;

On the proposal of our minister of marine, in concert with our minister for foreign affairs, we have and do decree:

ARTICLE I. It shall not be allowed for any ship of war or privateer belonging to a belligerent state to enter into or remain with prize in any port or harbor of the kingdom, except in case of necessity.

ARTICLE II. In such exceptional cases, and under the conditions contained
[62] in the preceding article, ships of war and privateers must leave the coast of the kingdom as soon as the cause which forced them to seek shelter shall have been removed, and according to the dispositions of Article XI.

ARTICLE III. No sale, exchange, transfer, or gift of objects of plunder shall be made under any pretext in the ports, harbors, or coasts of the kingdom.

ARTICLE IV. No Italian subjects shall take commission from either belligerent power

to arm ships for war, or to accept letters of marque to cruise, or assist in any way in fitting out, arming, or preparing for war a vessel or privateer of the said belligerents.

ARTICLE V. According to the thirty-fifth article of the penal code for the mercantile marine, no Italian subject shall be enrolled or take service on any ship of war or privateer belonging to either belligerent.

ARTICLE VI. No Italian subjects guilty of contravention of the rules laid down in the preceding articles 4 and 5, or who shall commit any act against one of the belligerent powers, contrary to the duties attendant upon the neutrality maintained by the Italian government toward the said parties, can claim protection against the acts or measures of whatever nature which the belligerents may deem right to enforce against them, and besides, they incur the penalties mentioned in article 5 of the present decree, according to the dispositions of the eightieth article of the penal code for the mercantile marine, dated January 13, 1827.

ARTICLE VII. No belligerent vessel of war or privateer shall remain more than twenty-four hours in any port, harbor, or anchorage in the kingdom or adjacent waters, even though alone, except in cases of necessity caused by stress of weather, for repairs, or for want of necessary provisions for the safety of navigation.

ARTICLE VIII. Vessels of war belonging to a friendly power, even though belligerent, can anchor and remain in the ports and harbors of the kingdom, when their mission is purely scientific.

ARTICLE IX. In no case shall a belligerent vessel of war make use of an Italian port for warlike purposes, or for providing itself with arms and ammunition.

Neither shall it under pretext of repairs do anything to increase its force in action.

ARTICLE X. There shall not be furnished to belligerent vessels of war or privateers other than provisions in portions for the subsistence of the crew, and the mere means for making those repairs actually necessary for the safety of the vessel.

Belligerent vessels of war and privateers wishing to coal can only do so twenty-four hours after their arrival.

ARTICLE XI. When vessels of war, privateers, or merchant-vessels of both belligerent powers shall meet in the same port or harbor of the kingdom, there shall be an interval of twenty-four hours between the departure of any vessel belonging to one power and that of any vessel of the other power.

The local maritime authority has power to prolong this interval according to circumstances.

ARTICLE XII. In ports considered as naval fortresses or military fortresses; in anchorages where military or naval arsenals, dock-yards, or other similar buildings, only three vessels of war belonging to the same power shall be there at once, and then for no period exceeding eight days.

This period can only be extended in cases of necessity or for the sake of repairs, under formal permission of His Majesty's government, to whom application must be made by the local maritime authorities through the minister of marine.

ARTICLE XIII. The ports and places of anchorage treated of in the preceding article are:

Genoa and adjacent waters toward the shore of Foce; the Gulf of Spezia, Leghorn; Portoferraj; Naples; Baja; Castellamare; Gaeta; Messina, (with the anchorages of Faro and Reggio in Calabria;) Milazzo; Syracuse; Augusta; Palermo; Frapani; Taranto; Brindisi; Ancona; Cagliari; island of Maddalena.

ARTICLE XIV. The local maritime authorities of the plans mentioned in the preceding article shall, on the arrival of foreign vessels of war, present to their commanders, or commander of the squadron, a copy of the present regulations for their information, and request them to conform to them.

ARTICLE XV. All maritime authorities in the kingdom are expected to adopt strictly all the measures prescribed in the present decree, which shall take effect from the day of its publication in the various parts of the kingdom.

ARTICLE XVI. All dispositions at present in force, and which are contrary to those contained in the present decree, are hereby abrogated.

We command that this present decree, furnished with the great seal and registered at the court "*dei conti*," be inserted in the official collection of laws and decrees of the kingdom of Italy, desiring all it may concern to obey it and make it obeyed.

(Signed) VITTORIO EMANUELE.

(Countersigned) E. CUGIA.

TURIN, *April* 6, 1864.

Extract from Italian naval code, Chapter VII.—Of the neutrality of the state toward belligerent powers.

In case of war between powers toward which the state remains neutral, privateers or vessels of war with prizes shall not be received into the harbors or roadsteads, except in cases of stress of weather.

They will have to leave as soon as the danger has ceased.

No ship of war or privateer belonging to a belligerent will be allowed to remain longer than twenty-four hours in a port, harbor, or roadstead of the state, or in the adjacent waters, even when alone, except in case of necessity arising from bad weather, of shipwreck, or of an absence of the means necessary to carry on the navigation with safety.

In no case will they be permitted during their stay in the port, harbor, or roadstead of the state to sell, exchange, or barter, or even give away any of the prizes, (taken in war.)

The ships of war of a friendly power even when belligerent are permitted to touch or even to remain in any harbor, port, or roadstead of the state on condition that the object of their mission be exclusively a scientific one.

In no case can a belligerent ship avail itself of an Italian port for the purposes of war, or of obtaining arms and munitions. It shall not be able under the pretense of repairs to execute any alterations or other works designed to augment its warlike force.

Nothing shall be furnished to vessels of war or to belligerent privateers beyond articles of food and commodities, and the actual means of repair necessary to the sustenance of their crews and the safety of their navigation.

Vessels of war or belligerent privateers wishing to fill up their stores of coal cannot be furnished with the same before twenty-four hours after their arrival.

In the case in which vessels of war, whether privateers or merchantmen of the two belligerent nations, are both together in a port, harbor, or roadstead of the state, there shall be an interval of at least twenty-four hours between the successive departures of the vessels of one belligerent and those of the vessels of the other.

This interval can be increased according to the circumstances brought before the maritime authorities of the place.

The capture of prizes, as well as any other act of hostility between two belligerent ships within the territorial waters or the adjacent waters of the islands of the state, will constitute a violation of territory.

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[63] *THE NETHERLANDS.

(Received from Her Majesty's legation at the Hague.)

Note from the minister for foreign affairs to His Majesty's chargé d'affaires.

LA HAYE, *le* 6 *mars* 1867.

Le S. S., etc., etc., a eu l'honneur de recevoir la note que M. Ward, etc., etc., lui a adressée sous la date du 16 de ce mois, et dans laquelle il demande, au nom de son gouvernement, des renseignements au sujet des lois, règlements ou autres moyens dont celui des Pays-Bas pourrait éventuellement faire usage, afin d'empêcher, en dedans des frontières du royaume, des actes dont des puissances belligérantes pourraient se plaindre comme d'une violation des devoirs de la neutralité.

En réponse le S. S., etc., etc., s'empresse de porter à la connaissance de M. Ward qu'il n'existe pas dans le royaume des Pays-Bas une collection de lois ou règlements concernant les droits et devoirs de la neutralité en général, ni de lois ou ordonnances spéciales pour l'une ou l'autre partie de cette matière importante du droit public externe. Le gouvernement peut, ainsi qu'il sera dit plus loin, faire usage des articles 84 et 85, code pénal; mais, les cas exceptés, où ceux-ci trouvent leur application des dispositions législatives, proprement dite, n'ont pas été prises en vue de la neutralité de l'état et pour mettre le gouvernement à même de sauvegarder cette neutralité, et de sévir contre ceux qui tenteraient de la violer.

En général, on peut dire que dans aucun pays la matière surmentionnée n'a été réglé ni mise sous le contrôle des lois, et si la Grande-Bretagne et les États-Unis ont leur "Foreign Enlistment Act," cette loi est d'une portée fort limitée. Jusqu'ici le gouvernement des Pays-Bas n'a pas cru qu'il fut nécessaire ou opportun, de renfermer dans une ou plusieurs lois ce qui a trait aux droits et devoirs de la neutralité; mais il s'est borné a suivre scrupuleusement les principes du droit des gens moderne de l'Europe, et à faire inter dans la Gazette Officielle (ainsi que par exemple la France et la Grande-Bretagne l'ont fait également en 1861, et plus tard) des avertissements qui fixent l'attention des sujets néerlandais sur le danger du transport de contrebande ou de dépêches, de la violation d'un blocus effectif, d'exercer la course ou d'accepter des lettres de marque. On y regle également l'admission dans nos ports des navires de guerre belligérants, et un résumé des instructions spéciales envoyées aux gouverneurs des colonies néerlandaises lors de la guerre civile aux États-Unis a été communiqué à la légation britannique sous la date du 17 décembre 1861.

L'année dernière ces avertissements ont reçu plus d'étendue et de précision; le gouvernement a pris, en outre, l'engagement de veiller à ce que l'equipement de vaisseaux de guerre pour les parties belligérantes n'ait pas lieu dans les ports néerlandais. Un exemplaire de la Gazette Officielle du 20 mars 1866, renfermant ces avertissements, se trouve ci-annexé (une erreur s'étant glissée dans le préambule, elle a été rectifiée dans la Gazette ci-jointe du 21 mars).

Quant aux moyens coactifs dont le gouvernement pourrait disposer pour empêcher des violations de sa neutralité, les articles 84 et 85 du code pénal peuvent aussi, dans quelques cas, servir à ce but. Ceux, par exemple, qui tâcheraient d'équiper ou de vendre des vaisseaux de guerre dans nos ports, pour le compte des belligérants, pourraient être poursuivies en vertu de ces articles; les navires, alors, seraient saisis comme pièce de conviction et, par là même, leur sortie serait empêchée.

Le S. S. prie M. Ward de communiquer ce qui précède à son gouvernement en ajoutant qu'il serait fort agréable à celui des Pays-Bas d'apprendre quels sont les articles qui, aux yeux du cabinet de Londres, doivent être rangés parmi ceux designés sous le nom de contrebande de guerre.

Le S. S. prie M. Ward, etc., etc., etc.

(Signé) DE ZUYLEN DE NYEVELT.

Translation of proclamation.—Ministry of foreign affairs.

As war is now existing between Brazil (in league with the Argentine Republic and Uruguay) and Paraguay, as well as between Spain and Chili, while Peru has declared war against Spain, the minister of foreign affairs and the minister of justice are empowered by the King to advise by these presents all inhabitants of this kingdom by no means to meddle with privateering, and to accept no foreign letters of marque. Should Netherlanders who practice any such privateering business, or lend a hand in it, be pursued before the Dutch authorities, the affairs of such people will be treated as criminally hostile, and will receive the punishment awarded by the law.

(Signed) The above-mentioned ministers,

E. CREMERS.
PICKÉ.

THE HAGUE, *March* 17, 1866.

In consequence of the commands of the King, the ministers of foreign affairs, of justice, and of marine, bring to the knowledge of all whom it may concern, that for the preservation of a complete neutrality during the war between the powers mentioned in the previous amendment, the following determinations have been resolved upon:

ARTICLE I. No ships of war or privateers belonging to one of the belligerent powers with prizes shall be allowed to come into Dutch harbors or estuaries or remain there to refit, unless they are overtaken by evident necessity, such as misfortune at sea or want of provisions. They shall, moreover, so soon as the cause which delayed them be overcome, go on their way as speedily as possible.

ARTICLE II. Proclaiming prizes, the selling, bartering, or giving away of all prizes and of objects coming out of them, also of plundered goods, is forbidden in the harbors or estuaries of the Netherlands. It is also forbidden to unrig and sells ships of war or cruisers of the belligerent parties, also privateers, (so far as these are admitted,) unless the government in ordinary circumstances gives judgment that the sale can take place without danger to the neutrality of the state.

ARTICLE III. Privateers, even without prizes, are not admitted into Dutch harbors and estuaries, except in the cases specified in Article I. The conclusion of that article is also applicable to this one.

They must take in no more provisions than they require for immediate use, of coal, hardly as much as is necessary to supply their wants for twenty-four hours.

ARTICLE IV. The ships of war of the belligerent parties, provided they submit to the international regulations for their admission into neutral ports, may remain for unlimited time in Dutch harbors and estuaries; they may also provide themselves with an unlimited quantity of coal.

The government, however, reserves to itself the right, whenever it is thought necessary for the preservation of neutrality, to limit the duration of such stay to twenty-four hours.

ARTICLE V. When ships of the belligerent parties (either ships of war, cruisers, or merchantmen) find themselves at the same time in the same harbor to refit, or in the inner waters of the country, a period of at least twenty-four hours must elapse between the departure of a ship of one belligerent party and the following departure of a ship belonging to another belligerent.

This period of time may be lengthened according to circumstances, by the maritime authorities of the harbors.

ARTICLE VI. It is forbidden to furnish to the ships of war of either of the belliger-

ent parties weapons or ammunition, as well as to aid in any way to the increase of his weapons or accouterments.

The above-named ministers,

E. CREMERS.
PICKÉ.

THE HAGUE, *March* 17, 1866.

The minister of war charged *ad interim* with the department of marine.
(Signed) J. W. BLANKEN.

[64] The minister of foreign affairs thinks it his duty, in consequence of the war existing between the above-mentioned powers in South America, to call the attention of ship-owners, manufacturers, and freighters to the dangers and difficulties to which they expose themselves in putting themselves in opposition to their duties to the neutral powers; they do not respect an actual blockade or transport contraband of war, soldiers, or dispatches intended for one of the belligerents.

In these circumstances the parties concerned will be exposed to all results proceeding herefrom without any protection or intervention from the Netherland government, whatever claims they may make.

Also the government will keep strict watch against the fitting out, in this country, of armed ships on behalf of the belligerent parties, or the taking part therein by Netherlanders.

The above-named minister,
(Signed) E. CREMERS.

THE HAGUE, *March* 17, 1866.

Articles 84 et 85 du pénal (code Napoléon), livre III, titre I.

ARTICLE 84. Quiconque aura, par des actions hostiles non approuvées par le gouvernement, exposé l'état à une déclaration de guerre, sera puni du bannissement: et, si la guerre s'en est suivie, de la déportation.

ARTICLE 85. Quiconque aura, par des actes non approuvées par le gouvernement, exposé des Français à éprouver des représailles sera puni du bannissement.

PORTUGAL.

LISBON, *February* 26, 1867.

MY LORD: In reply to your lordship's dispatch, marked circular of the 14th instant, instructing me to procure information respecting the neutrality laws in Portugal, I have the honor to state to your lordship that I have this day received from the Portuguese minister a note, of which a copy, together with a translation by Mr. Duff, is herewith transmitted. Your lordship will perceive that its information is restricted to furnishing me with copies of the Portuguese declarations of neutrality, which are already in the possession of Her Majesty's government.

I have, therefore, requested further information in a note, of which I beg also to inclose a copy, as to what are the laws, regulations, or any other means at the disposal of the Portuguese government for preventing, within their territory, any acts which would be violations of the Portuguese neutrality laws, as contained in the declarations of neutrality which M. Cazal Ribeiro has transmitted to me.

I have the honor to be, &c.,

A. PAGET.

The Right Hon. LORD STANLEY, M. P.,
&c., &c., &c.

FOREIGN DEPARTMENT, LISBON,
February 25, 1867. (Received 26.)

MOST ILLUSTRIOUS AND EXCELLENT SIR: I received the note which your excellency was pleased to address to me on the 19th instant, wherein you inform me that inasmuch as Her Majesty's government had appointed a commission to inquire into the neutrality laws in England, and were desirous to obtain information respecting the laws, regulations, or any other measures that may have been adopted in other countries upon this subject, they had instructed your excellency to point out to them what were the laws and regulations of Portugal for the purpose of preventing, within the Portuguese territory, any acts that might be considered to be a violation of the laws of neutrality.

And as your excellency requested me to forward to you copies of the laws and regulations to which you refer, as well as any other information that I might be able to furnish you upon this point, I have the honor to state to your excellency that as Portugal professes the most liberal principles with regard to neutrality, and as it is desirous to cooperate toward the consolidation of those principles, and the securing of the freedom

of the maritime trade and navigation of neutral powers, it did not hesitate, so far back as the year 1782, to accede to the declaration made by Russia on the 28th of February, 1780, to several powers, and to agree in the convention entered into with that empire, on the 12th of July of the above-mentioned year of 1782, to identical principles with those which are laid down in the second, third, and fourth articles of the declaration of the congress of Paris, of the 16th of April, 1856, on maritime law, a declaration to which Portugal fully and entirely adhered, because it was in accordance with the doctrines which it has for so many years professed with regard to neutrality.

Before the adhesion of Portugal to the declaration of the 16th of April, 1856, to which I allude, and at the time of the eastern question, the decree of the 5th of May, 1854, (of which a copy is inclosed,) was published, in order that the most strict and absolute neutrality should be observed in this kingdom, in regard of those powers which were then in a state of war.

On the 29th of July, 1861, the Portuguese government being desirous, under the circumstances which then occurred with respect to the United States of America, to enforce a compliance with the principles set forth in the declaration of Paris of the 16th of April, 1856, published the decree of that date, of which I also forward the inclosed copy to your excellency.

Finally, by the decree of the 2d of July, 1856, on the occasion of the breaking out of the war between Italy and Austria, as well as between Russia, that empire and other states of Germany, and of which a copy was sent to the several chiefs of missions of Portugal, in order that they should communicate the provisions contained therein to the government to which they were accredited, your excellency will see what are the neutrality laws now in force in Portugal.

I avail myself, &c.,
(Signed) CAZAL RIBEIRO.

Sir A. PAGET, *&c., &c., &c.*

BRITISH LEGATION, LISBON,
February 26, 1867.

M. LE MINISTRE: I have the honor to acknowledge the receipt of your excellency's note of yesterday's date, respecting the neutrality laws of Portugal, and to thank your excellency for the documents with which you have been good enough to furnish me.

There is one point, however, upon which Her Majesty's government are most desirous of information, to which your excellency's note, and the inclosures it contains, do not refer, namely, what laws or regulations, or any other means, are at the disposal of the Portuguese government for preventing, within its territory, any acts which would be violations of the Portuguese neutrality laws, as contained in the declarations of neutrality which your excellency has transmitted to me. If your excellency would supply me with this information, I should be greatly obliged.

I avail myself, &c.,
(Signed) A. PAGET.

H. E. M. CAZAL RIBEIRO.

LISBON, *March* 29, 1867.

MY LORD: With reference to my dispatch of the 26th ultimo, I have the honor to transmit to your lordship a copy, with translation by Mr. Duff, of a further note which I have received from the Portuguese minister respecting the neutrality laws and their enforcement in Portugal.

I have the honor to be, &c.,
A. PAGET.

The Right Hon. LORD STANLEY, *M. P.*,
&c., &c., &c.

[65] FOREIGN DEPARTMENT, LISBON,
March 18, 1867. (Received 22d.)

MOST ILLUSTRIOUS AND EXCELLENT SIR: I had the honor to receive the note which your excellency was pleased to address to me on the 26th of February last, requesting to be informed, in compliance with the wishes expressed by your government, what laws or means does the Portuguese government possess to enable it to prevent within its territory any acts of violation of neutrality.

In reply, it is my duty to state to your excellency that the laws and regulations in the matter are those which were inclosed in my note of the 25th of that month, or were mentioned in those documents, and the means of execution in the case of any violation of neutrality are, criminal proceedings, the use of force, complaints addressed to foreign governments, or any other means in order to meet some particular occurrence.

I avail myself, &c.,
(Signed) CAZAL RIBEIRO.

Sir A. B. PAGET, *&c., &c., &c.*

PRUSSIA.

(Received from Her Majesty's embassy at Berlin.)

Note from the minister of foreign affairs to Her Majesty's embassador.

BERLIN, *March* 11, 1867.

The undersigned has the honor to state, in reply to the note of Lord Loftus, &c., of the 15th ultimo, that the decrees contained in the Prussian code of laws for preventing, during a war between foreign states, acts on Prussian territory which could be construed as an infringement of neutrality, are partly direct and partly indirect.

A direct decree is contained in section 78 of the code of punishments of the 14th April, 1851, by which hostile acts committed by a Prussian in his own country or abroad, or by a foreigner during his residence in Prussia, against a foreign state or its ruler, are punishable, if the same acts committed against the King of Prussia would be held to be high treason. But with respect to acts committed against non-German states, this decree is only enforced when reciprocity is guaranteed by public decrees or treaties.

The punishment consists in imprisonment in the house of correction for from two to ten years; but under extenuating circumstances, in confinement for one to ten years. Should the intention be discovered before the act is carried out, confinement from six months to three years.

It is stated in section 61 of what nature these hostile acts must be to render them liable to punishment, viz, every attempt which has for its object—

1. To murder the King, to take him prisoner, to deliver him into the power of the enemy, or to render him incapable of governing; or

2. Forcibly to alter the succession to the throne, or the constitution of the state; or

3. To incorporate either entirely or partially the territory of the Prussian state into a foreign state, or to separate a portion of territory from the whole.

Furthermore, in section 111, whoever enlists or causes the enlistment of a Prussian in a foreign military service will be punished with imprisonment for from three months to three years. The attempt to commit this act will be punished in the same manner.

Under the head of indirect preventive measures against breach of neutrality come all those laws which enable the government generally to oppose the maturing of acts of violence within the territory of the state. The following clauses of the book of the penal code apply to this:

§ Whoever assembles or commands armed bodies of men without authority, or who furnishes with arms, or the necessaries of war, a body of men whom he knows to be assembled without the permission of the law, will be punished with imprisonment not exceeding two years.

Whoever takes part in such armed meeting, has rendered himself liable to imprisonment for a term not exceeding one year.

§ 340.

2. Whoever secretly, or in defiance of the authorities, stores up arms or ammunition, it not being his trade, will be punished with a fine of 50 rths, or six weeks' imprisonment. In these cases a confiscation of the stores takes place.

The undersigned, &c.,

For the minister of foreign affairs,

(Signed) THILE.

RUSSIA.

ST. PETERSBURG, *August* 29, 1867.

MY LORD: With reference to your lordship's dispatch circular of February 14, instructing me to ascertain and report what laws, regulations, and other means the Russian government possess for preventing acts within its territories of which belligerents might complain as a violation of the duties of neutrality, I have the honor to inclose a copy of a note which I have received from M. de Westmann, stating that with the exception of article 259 of the Russian penal code, which forbids Russian subjects to afford military succor to any power in a state of war with a government allied to that of Russia, there are no laws existing in this country of the nature alluded to in your lordship's dispatch. A translation of the article of the penal code referred to is inclosed.

I have, &c.,

(Signed) ANDREW BUCHANAN.

The LORD STANLEY, *M. P., &c., &c., &c.*

SAINT-PÉTERSBOURG, *le* $\frac{16}{28}$ *avril* 1867.

M. L'AMBASSADEUR: En réponse à la note que vous avez bien voulu m'adresser le 26 février, j'ai l'honneur d'informer votre excellence, qu'à l'exception du § 259 du code pénal de l'empire, qui contient une défense aux sujets russes de favoriser les succès militaires d'une puissance en guerre avec un gouvernement allié de la Russie, la législation russe ne renferme pas de dispositions ayant pour but d'empêcher, sur le territoire de la Russie, l'accomplissement d'actes dont les puissances belligérantes pourraient se plaindre comme d'une violation du principe de neutralité.

Agréez, &c.,
(Signé) WESTMANN.

Translation.—§§ 259.—Penal code of Russia.

If any Russian subject in time of peace shall by open force attack the inhabitants of a neighboring state, or those of any other foreign country, and shall thereby subject his own country to the danger of a rupture with a friendly power, or even to an attack by such foreign subjects on the territory of Russia, for such a crime against international law the offender, and all those who participate voluntarily in his enterprise, with a knowledge of its objects and illegality, shall be sentenced to lose all their civil rights, and be condemned to hard labor in a fortress for a term of eight to ten years.

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[66] SPAIN.

(Received from Her Majesty's legation at Madrid.)

Note from the minister for foreign affairs to Her Majesty's minister.

[Translation.]

PALACE, 22*d February*, 1867.

SIR: I have received the note which your excellency addressed to me on the 17th instant, requesting, in the name of your government, a copy of the laws and regulations in force in the peninsula concerning neutrality.

In this matter Spain has always adapted herself to the principles of international right, and solely on the occasion of the late war in the United States did Her Majesty's government issue a decree on the neutrality to be observed by Spanish subjects during that contest.

Of that document (the only one existing on the subject) a copy has been made, which I have the honor to transmit to your excellency, in answer to your above-mentioned note.

I avail, &c.,
(Signed) E. D. CALONGE.

H. B. M. MINISTER PLENIPOTENTIARY.

[Translation.]

Royal decree concerning neutrality in the United States war, issued by H. C. M., on the 17*th June*, 1861.

Taking into consideration the relations which subsist between Spain and the United States of America, and the propriety of causing no detriment to the reciprocal sentiments of good understanding on account of the grave events which have happened in that republic, I have resolved to maintain the strictest neutrality in the contest entered into between the Confederate States of the South and the Federal States of the Union; and in order to avoid the prejudice which might result to my subjects, and to navigation and commerce, in consequence of the want of clear dispositions by which to regulate their conduct, in accordance with my council of ministers I decree the following:

ARTICLE 1. The fitting out, supplying, and equipment of any privateer in any of the ports of the monarchy is prohibited, whatever may be the flag which she may hoist.

ART. 2. The proprietors, masters, or captains of merchant-vessels are also prohibited from receiving letters of marque, and from contributing in any way to the armament and equipment of vessels of war or privateers.

ART. 3. Ships of war or privateers with prizes are prohibited from entering and

remaining for more than twenty-four hours in the ports of the monarchy, except in the case of forced arrival.

When the latter shall occur, the authorities shall watch the ship, and shall oblige her to put to sea as soon as possible, without permitting her to supply herself with anything more than that which is necessary for the moment, but under no circumstances with arms or with munitions of war.

ART. 4. Articles taken from prizes shall not be sold at the ports of the monarchy.

ART. 5. The transport of all articles of commerce under the Spanish flag is guaranteed, except when intended for the blockaded ports.

The carrying of effects of war and of papers or communications for the belligerents is prohibited. Contraveners will be responsible for their own acts, and will have no right to the protection of my government.

ART. 6. All Spaniards are prohibited from enlisting in the belligerent armies, and from engaging themselves for service in vessels of war or privateers.

ART. 7. My subjects will abstain from any act which, by violating the laws of the kingdom, might be considered contrary to neutrality.

ART. 8. Contraveners of the above orders will have no right to the protection of my government, they will suffer the consequences of the measures taken by the belligerents, and will be punished according to the laws of Spain.

SWEDEN.

(Received from Her Majesty's legation at Stockholm.)

Note from the minister for foreign affairs to Her Majesty's minister.

STOCKHOLM, *le 23 février* 1867.

MONSIEUR: Pour satisfaire à la demande que vous m'avez faite, monsieur, par la note que vous m'avez fait l'honneur de m'adresser le 19 ct., je m'empresse de vous informer que les dispositions de la déclaration du congrès de Paris en date du 16 avril 1856, et de l'ordonnance ci-jointe en date due 8 avril 1854, sont les seules ici en vigeur en matière de neutralité et que, du reste, il est chez nous admis, en principe, que là ou il n'existe pas de loi ou pacte positif pour régler les droits et les devoirs des neutres en temps de guerre, les règles ou principes que l'usage général des nations a consacrés doivent trouver leur application.

Veuillez agréez, monsieur, &c.,

(Signé) MANDERSTRÖM.

Monsieur JERNINGHAM, *&c., &c., &c.*

ORDONNANCE DU ROI.

Relativement à ce qui doit être observé, pour la sureté du commerce et de la navigation de la Suède en temps de guerre entre des puissances étrangères.

DONNÉE À STOCKHOLM, *le 8 avril* 1854.

Nous, Oscar, par la grâce de Dieu, roi de Suède et de Norvége, des Goths et des Vandales, savoir faisons: qu'ayant reconnu la nécessité, en vue des collisions qui menacent d'éclater entre des puissances maritimes étrangères, que ceux de nos fidèles sujets, qui exercent le commerce et la navigation, observent rigoureusement les obligations et précautions requises pour assurer au pavillon suédois tous les droits et priviléges qui lui reviennent en qualité de pavillon neutre, et pour éviter également tout ce qui pourrait en quelque manière le rendre suspect aux puissances belligérantes et l'exposer à des insultes: nous avons jugé à propos, en rapportant ce qui a été statué précédemment à cet égard, d'ordonner que les règles suivantes devront dorénavant être généralement observées:

§ 1. Pour être admis à jouir des droits et priviléges revenant au pavillon suédois en sa qualité de neutre, tout bâtiment suédois devra être muni de documens qui, d'apres les ordonnances existantes[1] sont requis pour constater sa nationalité, et ces documens devront toujours se trouver à bord du bâtiment pendant ses voyages.

§ 2. Il est sévérement défendu aux capitaines d'avoir des papier de bord et des connaissemens doubles ou faux, ainsi que de hisser pavillon étranger, en quelle occasion, ou sous quel prétexte que ce soit.

§ 3. S'il arrivait que, pendant le séjour d'un bâtiment suédois à l'étranger, l'équipage, soit par désertion, mort, maladie, ou autres causes se trouvât diminué au point de n'être plus suffisant pour la manœuvre du navire, et qu'ainsi des matelôts étrangers

[1] Les ordonnances royales du 1 mars 1841 et du 15 août 1851.

devront être engagés, ils devront être choisis de préférence parmi les sujets de puissances neutres; mais dans aucun cas le nombre des sujets des puissances belligérantes, qui se trouveront à bord du navire, ne devra excéder un tiers du total de
[67] l'équipage. Tout *changement de cette nature dans le personnel du navire, avec les causes qui y ont donné lieu, devra être marqué par le capitaine sur le rôle de l'équipage, et la fidélité de cette annotation devra être certifiée par le consul ou vice-consul suédois compétent, ou bien, en cas qu'il ne s'en trouvât point sur les lieux, par la municipalité, le notaire public, ou quelqu'autre personne de la même autorité, suivant les usages des pays respectifs.

§ 4. Les bâtimens suédois, en qualité de neutres, pourront naviguer librement vers les ports et sur les côtes des nations en guerre; toutefois, les capitaines devront s'abstenir de toute tentative d'entrer dans un port bloqué, dès qu'ils ont été formellement prévenus de l'état de ce port par l'officier qui commande le blocus.

Par un port bloqué, on entend celui qui est tellement fermé par un ou plusieurs vaisseaux de guerre ennemis stationnés et suffisamment proches, qu'on ne puisse y entrer sans danger évident.

§ 5. Toutes marchandises, même propriété des sujets des puissances belligérantes, pourront être librement menés à bord des bâtimens suédois, en leur qualité de neutres, à la reserve des articles de contrebande de guerre. Par contrebande de guerre, il faut entendre les articles suivans; canons, mortiers, armes de toute espèce, bombes, grenades, boulets, pierres à feu, mèches, poudre, saltpêtre, souffre, cuirasses, piques, ceinturons, gibernes, selles et brides, ainsi que toutes fabrications pouvant servir directement à l'usage de la guerre—en exceptant toutefois la quantité de ces objets qui peut être nécessaire pour la défense du navire et de l'équipage.

Pour le cas qu'à l'égard de la définition des objets de contrebande de guerre, des changements ou additions devraient être introduits par suite de conventions avec les puissances étrangères, il en sera ultérieurement statué.

§ 6. Il est interdit à tout capitaine suédois de se laisser employer, avec le bâtiment qu'il conduit, à transporter, pour aucune des puissances belligérantes, des dépêches, des troupes, ou des munitions de guerre sans y être contraint par une force réelle, auquel cas il devra protester formellement contre un tel emploi de la force.

§ 7. Les bâtimens des puissances belligérantes pourront importer dans les ports suédois et en exporter toutes denrées et marchandises, pourvu que, d'après le tarif général des douanes, elles soient permises à l'importation ou à l'exportation, et à la reserve des articles réputés contrebande de guerre.

§ 8. Il est défendu à tout sujet suédois d'armer ou d'équiper des navires pour être employés en course contre quelqu'une des puissances belligérantes, leurs sujets et propriétés, ou de prendre part à l'équipement de navires ayant une pareille destination. Il lui est également défendu de prendre service à bord de corsaires étrangers.

§ 9. Il ne sera permis à aucun corsaire étranger d'entrer dans un port suédois et de séjourner sur nos rades. Des prises ne pourront non plus être introduites dans les ports suédois, autrement que dans le cas de détresse constatée. Il est également interdit à nos sujets d'acheter, des corsaires étrangers, des effets capturés, de quelle espèce que ce soit.

§ 10. Lorsqu'un capitaine, faisant voile sans escorte, est rencontré en pleine mer par quelque vaisseau de guerre de l'une des puissances belligérantes ayant droit de contrôler ses papiers de bord, il ne doit ni se refuser, ni chercher à se soustraire à cette visite; mais il est tenu à produire ses papiers loyalement et sans détour, ainsi qu'à surveiller que ni depuis que son navire ait été hélé, ni pendant la visite aucun des documens concernant le navire ou son chargement ne soit soustrait ou jeté à la mer.

§ 11. Lorsque les bâtimens marchands font voile sous escorte de vaisseaux de guerre, les capitaines devront se régler sur ce qui est prescit par l'ordonnance royale du 10 juin 1852.

§ 12. Le capitaine qui observe scrupuleusement tout ce qui lui est prescrit ci-dessus, doit jouir, d'après les traités et le droit des gens, d'une navigation libre et sans gêne; et si, nonobstant, il est molesté, il a droit de s'atteudre à l'appui le plus énergique de la part de nos ministres et consuls à l'étranger, dans toutes les justes réclamations qu'il pourra faire pour obtenir réparation et dédommagement; au lieu que la capitaine qui omet et néglige d'observer ce qui vient de lui être prescrit pour sa route, ne devra s'en prendre qu'à lui-même des désagrémens qui pourront résulter d'une pareille négligence, sans avoir à espérer notre appui et protection.

§ 13. Dans le cas qu'un navire suédois fut saisi, le capitaine doit remettre au consul ou vice-consul suédois, s'il s'en trouve dans le port où son bâtiment est amené, mais, à son défaut, au consul ou vice-consul suédois le plus voisin, un rapport fidèle et dûment certifié des circonstances de cette prise avec tous ses détails.

Mandons et ordonnons à tous ceux à qu'il appartiendra de se conformer exactement à ce que dessus. En foi de quoi nous avons signé la présente de notre main et y avons fait apposer notre sceau royal. Donné au château de Stockholm le 8 avril 1854.

[L. S.] OSCAR.

J. P. FAHRAEUS.

UNITED STATES.

WASHINGTON, *February* 18, 1867.

MY LORD: I have the honor to acknowledge the receipt of your lordship's telegram of the 14th instant, inquiring what laws, regulations, or other means the United States Government possess for the prevention of acts within their territories of which belligerents might complain as violating duties of neutrality.

The only law on the subject is the neutrality act of 1818. In the accompanying volume of Brightley's Digest I have marked the law. In the foot-notes your lordship will find the principal cases which have been decided in the courts of the United States bearing upon the construction of the statutes.[1]

When a complaint is addressed to the Government of a vessel being fitted out [68] in breach of the law, the matter is referred for investigation to the district court attorney (an officer of the Federal Government) in the State in which the vessel is situated. It is his duty to see that the law is respected, and it is incumbent upon him to receive and collect evidence, and to libel the ship, if in his opinion the circumstances of suspicion are sufficient to warrant the institution of legal proceedings against her. He then reports the case to the Government, who decide either in proceeding with the libel or on releasing the vessel. In the latter event it is in the power of the Government to call upon the owners to give bonds in double the value of the vessel not to employ her for illegal purposes. This course is pursued where the evidence shows grounds for suspicion, but when the grounds are not strong enough to warrant a prosecution with a view to forfeiture. Mr. Bemis, in a pamphlet on the neutrality laws, states that the bonds only affect the owners so long as the vessel remains in their possession; and he seems to be of opinion that, in the event of a *bona fide* sale, and of her subsequent employment as a cruiser or privateer against a friendly power, it would not be found possible to enforce the penalty against the original owners.

I inclose a newspaper extract, with reference to the proceedings against a steamer called the "R. R. Cuyler," which will show the manner in which the Government acts. In this case the Attorney-General directs that the libel be dismissed, and the vessel restored to the owners on their executing a bond as required by statute.

Though there are no specific regulations in force as to the mode in which the law is to be carried out, I apprehend it may be inferred that this Government would consider any circumstances of suspicion attending the fitting out or equipment of a ship as sufficient to warrant her detention until the case can be investigated by the district attorney. It is not necessary that the allegations should be of such gravity as, if proved, would warrant her forfeiture. The owners may be compelled by law to give a bond previous to the sailing of an armed vessel, to guard against the possibility of her being employed against a friendly power, should war exist between two countries at peace with the United States. And a similar bond can be exacted, under certain contingencies mentioned in the statute, from the owners of any vessel built for warlike purposes and laden with war materials.

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[1] NOTE.—The references here mentioned are the following:

(*a*) At the end of section 1. "See 2 McLean, 2; 5 *Ibid.*, 250."

(*b*) Section 2, after words "If any person." "Foreign consuls are not exempted from the penal effect of the statute. A foreign minister who violates its provisions is liable to be summarily dismissed. 7 Opinions, 367." [N. B.—The opinion here referred to is that of Caleb Cushing, which has been circulated among the commissioners.]

(*c*) In second section, after the second "himself." "This act is declaratory of the pre-existing law of nations, and was intended to aid the executive in the enforcement of that law. The Santissima Trinidada. 1 Brock; 7 Opinions, 367."

(*d*) In section 2, after word "Enlisted." "It is not a crime under this act to leave this country with intent to enlist in foreign military service; nor to transport persons out of the country, with their own consent, who have an intention of so enlisting. To constitute a crime under this statute, such persons must be hired or retained to go abroad with the intent of such enlisting. United States *vs.* Karinski; 8 Law Reports, 254. See 4 Opinions, 336."

(*e*) In section 3, after the first "arm." "Either will constitute the offense; it is not necessary that the vessel should be armed, or in a condition to commit hostilities on leaving the United States. United States *vs.* Quincy, 6 Pet., 445. See 3 Opin., 738, 741."

(*f*) In section 3, after the word "armed." "See United States *vs.* Guinet, 2 Dall., 328."

(*g*) In section 3, after words "with intent." "Any degree of intent to commit hostilities against a nation with which this Government is at peace is sufficient. 5 Opin., 92. But there must be a fixed intention that the vessel should be so employed. A mere wish to so employ her, if he could obtain funds on her arrival at a foreign port for the purpose of arming her, is not sufficient to render the defendant guilty. United States *vs.* Quincy, 6 Pet., 445; Moodie *vs.* The Alfred, 3 Dall., 307. But the fact that the arms and ammunition were cleared out as cargo, and the men shipped as for a common mercantile voyage, will not vary the case. The Gran Para, 7 Wheat., 486."

(*h*) In section 3, after word "people." "United States *vs.* Quincy, 6 Pet., 467."

(*i*) In section 5, after first "vessel." "As to what amounts to the augmentation of the force of a foreign armed vessel within our ports, see United States *vs.* Grassin, 3 W. C. C., 65. The Schooner Nancy, Bee., 73; Moodie *vs.* The Ship Brothers, *Ibid.*, 76; Moodie *vs.* The Betty Cathcart, *Ibid.*, 292; United States *vs.* Guinet, 2 Dall., 328; 2 Opin., 86."

(*k*) In section 6, after first "United States." "It is unimportant that such association originated beyond seas, if the expedition was carried on from hence. *Ex parte* Needham, Pet. C. C., 487."

(*l*) In section 6 after word "means for." "See 5 McLean, 250, 306; 2 Wheat., Cr. Cas., xlviii, 3 *Ibid.*, 174."

It is to be presumed that these provisions are intended to apply to cases of war-ships fitted out during time of war where no direct evidence appears of illegal intent, but where the Government thinks it advisable to call upon the owners to find security for keeping the peace. In order to effect this object, it is evident that a wide discretion must be left to the Government for the exercise of the power of detention.

I may remark that the Government of the United States has considerable advantages in proceeding against vessels under the statute. They have on the spot where the preparations are being made the district attorney, a legal officer responsible to the Government, to whom the duty of investigation is committed. The libel is in the nature of a proceeding in admiralty "*in rem*." It is decided by a judge conversant with international and maritime law, and without the intervention of a jury. The failure of the attempt to stop or punish the persons engaged in the expeditions against Cuba, and the suspension of proceedings against the men who took part in the Fenian raids against the British provinces, in spite of the clearest evidence, shows the difficulty of enforcing the law when it has to be put in operation "*in personam*," and when it is dependent on the verdict of a jury.

I have, &c.,

FREDERICK W. A. BRUCE.

The LORD STANLEY, *M. P.*,
&c., &c., &c.

"*The steamer R. R. Cuyler.—Conspiracy on board to assume control of the vessel at sea.—The owners not culpable.—The vessel to be bonded.*

"NEW YORK, *February* 15.

"The suspicion that the steamship R. R. Cuyler was intended for a piratical enterprise appears, from facts which have come to light since the seizure by the Government, to have been well founded. The theory advanced, which there is no grounds for doubting, is, that there was a conspiracy on board to assume control of the vessel after she had gone to sea, and thus deprive the lawful owners of their property, who were not to receive their pay for her until she was delivered at Laguayra, Venezuela, to the Colombian government. Whatever may have been intended by the extraordinary personages on board, and however they may have intended to execute their plans, are matters no longer to be regarded with alarm, as the party has been dispersed and the owners required to file bonds in twice the value of the vessel that she shall not be used by them to commit hostilities against any nation with which this Government is at peace. This is sufficiently set forth in the following letter received by Collector Smythe from the Secretary of the Treasury yesterday:

"*Order to the collector.*

"'TREASURY DEPARTMENT, *February* —, 1867.

"'SIR: I transmit herewith a copy of the letter of this date from the Attorney-General of the United States at New York to the United States district attorney at New York, relative to the steamship R. R. Cuyler. You are hereby instructed to carry out the decision of the President, to release the R. R. Cuyler to the owners, upon being advised in writing by the United States district attorney that the required bond has been given and the proceedings in court dismissed.

"'Very respectfully,

"'H. MCCULLOCH,
"'*Secretary of the Treasury.*

"'H. A. SMYTHE,
"'*Collector of Customs, New York.*'

"The following is a copy of the letter of the Attorney-General:

"*The Attorney-General's letter.*

"'ATTORNEY-GENERAL'S OFFICE,
"'*February* 13, 1867.

"'*In re* steamship R. R. Cuyler.

"'SAMUEL G. COURTNEY, Esq.,
"'*United States Attorney, New York City:*

"'SIR: The President has had under his consideration the case of the steamship R. R. Cuyler, now detained at the port of New York under a seizure made by the customs officers, and a libel filed by you on or about the 5th of the current month, for alleged infraction of our neutrality laws.

"'The decision of the President had thereon is, that such circumstances are shown

as to require bond and security to be given by the owners. Messrs. Sturges, Taylor, Hubbell, and Dollard, according to the provisions of the tenth and eleventh sections of the act of April 20, 1818, entitled "An act in addition to the 'Act for the punishment of certain crimes against the United States, and to repeal the acts therein named.'"—(3d vol. Statutes at Large, p. 447.)

"'You are accordingly instructed that, upon the entering and delivery to you [69] of such bond to the United States, with sufficient sureties, prior to the clearing of the vessel, in double the amount of the value and cargo on board, including her armament, conditioned that the vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, as provided by the said tenth section, you will dismiss the proceedings so instituted.

"'Instructions will be sent to the collector of the port by the Secretary of the Treasury for the release of the vessel to her owners, when you advise them that the bond has been given and the proceedings in court have been dismissed.

"'I am, very respectfully, &c.,

"'HENRY STANBERY,
"'*Attorney-General.*'"

Case of the R. R. Cuyler.—Alleged conspiracy of an ex-rebel captain and crew to turn the vessel into a Chilian privateer.—Bonds required by the Government.

From the New York Post.

The steamship R. R. Cuyler, seized some time ago by the customs authorities of this port, and held for examination on a charge that she was destined for an illegal voyage, is still in the hands of the officers, but the former owners and claimants of the vessel are confident she will soon be released. The theory that there was a conspiracy on board to take her from the owners, who were not, it is declared, to get their pay for her, or all of it, till she should be delivered at Laguayra, Venezuela, to the Colombian government, is now, it appears, fully accepted, and it goes into the case as part of the matter which the Attorney-General will consider when he decides whether the R. R. Cuyler ought to be held to await the action of the courts with a view to her condemnation if the charges should be sustained.

This theory is founded on information already partially given to the public. The evidence that the vessel was to become a Chilian privateer, or have some other illegal character, is considered complete; and her owners do not hesitate to admit that they would probably have lost her except for the interference of the United States authorities. This avowal raises many interesting points about the fitting out of the Cuyler, which will be fully investigated if an examination is entered upon, but which otherwise may never be brought out.

What is now recognized as the important fact of the case is that the conspiracy was fully matured, and was to be executed by ex-rebels, who comprised the passengers of the vessel. It appears that the getting together of these men and the equipment of them, with the purchase of some war material, costing more than $100,000, were the parts of the business about which the owners had no direct knowledge, and Read, the rebel officer who had charge of the numerous "passengers," only a part of whom it seems were on board the Cuyler, at the wharf, when she was ready to sail at the time of the seizure, was at the head of the piratical expedition. Exactly what was to be done with the Cuyler after she had left this port, and was in the hands of the desperadoes who had been gathered to take possession of her, the representatives of the men whose interests were involved do not undertake to say.

These things in some respects explain and in other respects complicate and mystify the affair of the Cuyler. What influence they may have on the determination of the matter is a curious question. That the vessel, if she had been allowed to go, would have made a legal voyage, nobody asserts; nor is it likely that the Government officers will urge that the American owners were guilty of complicity with the rebels, or with the persons, whoever they may have been, who furnished the means required at the beginning of the suspicious undertaking.

In a later edition the Post says:

Collector Smythe has to-day received a letter from the Secretary of the Treasury directing that the steamship R. R. Cuyler be released when the owners of her give bonds to the Government in double the amount of her value that she shall not be used by them to commit hostilities against any nation with which this Government is at peace.

If bonds are not given, and no new instructions come from Washington, proceedings for the confiscation of the vessel will go on. No intimation has yet been given as to what the course of the claimants will be.

The following declarations and notifications were issued by the several countries hereunder specified, on the breaking out of the civil war in America.

FRANCE.

Declaration respecting neutrality of France during struggle in America.

PARIS, *le* 10 *juin* 1861.

Le ministre des affaires étrangères a soumis à l'empereur la déclaration suivante, que sa majesté a revêtue de son approbation :

Déclaration.

Sa majesté, l'empereur des Français, prenant en considération l'état de paix qui existe entre la France et les États-Unis d'Amérique, a résolu de maintenir une stricte neutralité dans la lutte engagée entre le gouvernement de l'union et les états qui prétendent former une confédération particulière.

En conséquence, sa majesté, vu l'article 14 de l'ordonnance de la marine du mois d'août 1861, l'article 3 de la loi d'avril 1825, les articles 84 et 85 du code pénal, 65 et suivants du décret du 24 mars 1852, 313 et suivants du code pénal maritime, et l'article 21 du code Napoléon,

Déclare :

. Il ne sera permis à aucun navire de guerre ou corsaire de l'un ou l'autre des belligérants d'entrer et de séjourner avec des prises, dans nos ports ou rades, pendant plus de vingt-quatre heures, hors le cas de relâche forcée.

2. Aucune vente d'objets, provenant de prises, ne pourra avoir lieu dans nos dits ports ou rades.

3. Il est interdit à tout Français de prendre commission de l'une des deux parties pour armer des vaisseaux en guerre, ou d'accepter des lettres de marque pour faire la course maritime, ou de concourir d'une manière quelconque à l'équipement ou l'armement d'un navire de guerre ou corsaire de l'une des deux parties.

4. Il est également interdit à tout Français, résidant en France ou à l'étranger, de s'enrôler ou prendre du service, soit dans l'armée de terre, soit à bord des bâtiments de guerre ou des corsaires de l'un ou de l'autre des belligérants.

5. Les Français résidant en France ou à l'étranger devront également s'abstenir de tout fait qui, commis en violation des lois de l'empire ou du droit des gens, pourrait être considéré comme un acte hostile à l'une des deux parties, et contraire à la neutralité que nous avons résolu d'observer.

Les contrevenants aux défenses et recommandations contenues dans la présente déclaration seront pursuivis, s'il y a lieu, conformément aux dispositions de la loi du 10 avril 1825, et aux articles 84 et 85 du code pénal, sans préjudice de l'application qu'il pourrait y avoir lieu de faire aux dits contrevenants des dispositions de l'article 21 du code Napoléon, et des articles 65 et suivants du décret du 24 mars 1852, sur la marine marchande, 313 et suivants du code pénal pour l'armée de mer.

Sa majesté déclare, en outre, que tout Français qui ne se sera pas conformé aux présentes prescriptions ne pourra prétendre à aucune protection de son gouvernement contre les actes ou mesures, quels qu'ils soient, que les belligérants pourraient exercer ou décréter.

(Signé) NAPOLÉON.

Le ministre des affaires étrangères,
(Signé) E. THOUVENEL.

PRUSSIA.

The minister of commerce issued the notification annexed to the mercantile classes in the Baltic ports :

"It is my duty to make known to you that during the continuance of the conflict that has broken out among the North American States, the mercantile classes must abstain from all enterprises which are forbidden by the general principles of international law, and especially by the ordinance of the 12th of June, 1856, which has relation to the declaration of the 12th of April, 1856, upon the principles of maritime law. Moreover, I will not omit to make especially noticeable by you that the royal government will not permit to its shipping or its subjects, which may mix up in these conflicts by taking letters of marque, sharing in privateering enterprises, carrying merchandise contraband of war, or forwarding dispatches, to have the benefit of its protection against any losses which may befall them through such transactions.

"The equipment of privateers in the ports of this country is forbidden by the laws of the land, as is known to the mercantile community."

BELGIUM.

[Translation.]

Belgium has given its adhesion to the principles laid down in the declaration of the Congress of Paris of April 16, 1856. This adhesion was published, together with the said declaration, (6th June, 1856,) in the Belgian Moniteur of June 8, 1856.

The commercial public is notified that instructions on this subject have been given to the judicial, maritime, and military authorities, warning them that privateers, under whatever flag or commission, or letters of marque, are not to be allowed to enter our ports except in case of imminent perils of the sea. The aforesaid authorities are charged, consequently, to keep a strict watch upon all such privateers and their prizes, and to compel them to put to sea again as soon as practicable.

The same authorities have been charged not to recognize the validity of any commission or letter of marque whatsoever.

All persons subject to the laws of Belgium, who shall fit out or take any part in any privateering expedition, will, therefore, expose themselves to the danger, on the one hand, of being treated as pirates abroad, and, on the other, to prosecution before Belgian tribunals with all the rigor of the laws.

RUSSIA.

To the commander-in-chief of the port of Cronstadt:

His imperial highness the general-admiral, foreseeing the possibility of ships belonging to the Southern States of the American Union, which have seceded from the United States of North America, arriving at our ports during the present navigation, has directed me to inform your excellency, for your guidance, that, according to the opinion of the minister of foreign affairs, the flag of men-of-war belonging to the seceded States must not be saluted.

That there may be no obstacle in the way of commerce, merchant-vessels of the seceded States are to be treated according to the rules acted on by us with regard to Italian merchant-vessels sailing under the Italian flag, *i. e.*, according to the treaties that are at present in force (commercial treaty concluded between America and us, December $\frac{6}{18}$, 1832.)

Should the crews of vessels belonging to the seceded States not wish to acknowledge the authority of the consuls appointed by the Federal Government of Washington, then in case of dispute they must abide by the decision of our local authorities, in the same manner as foreigners whose governments have no representatives in our empire.

(Signed) General-Major GREIG,
Director of the Chancellery of the Minister of Marine.

Circular addressed to the custom-houses on the White, Baltic, Black, and Azoff Seas.

By order of the minister of finance, the department of foreign trade prescribes: In case any merchant-vessels arrive in our ports belonging to the Southern States of the American Union, the same not acknowledging the authority of the Government of the United States of America, the said vessels are to be treated and received as hitherto, according to the treaty of 1832, should even their ships' papers not be in order, which may occur in consequence of the present political condition of the United States of America.

(Signed) General-Lieutenant PASHKOFF,
Director of the Department of Foreign Trade.

SORNIN, *Chief of Section, &c.*

NETHERLANDS.

[Translation.]

AT THE HAGUE.

In obedience to the King's orders the ministers for foreign affairs, of justice, and of the marine, present to the knowledge of all it may concern, that to guard against probable difficulties during the doubtful complications in the United States of North America, no privateers under any flag soever, or provided with any commission or letters of marque, or their prizes, shall be admitted into our havens or sea-ports, unless in case of marine disaster, and that requisite orders be issued that under any circumstances such privateers and their prizes be required to go again to sea as speedily as possible.

The ministers above named.

[71] [Translation.]

THE HAGUE.

The minister for foreign affairs and the minister of justice, by the King's authority, warn, by these presents, all inhabitants of the kingdom, that during the existing disturbances in the United States of America they in nowise take part in privateering, because the Netherlands government has acceded to the declaration upon maritime rights set forth by the Paris conference of 1856, whereby, among other matters, privateering is abolished, and no recognition of commissions got for letters of marque permitted. Also, that commissions and letters of marque, in conflict with the aforesaid prohibition, which may issue to inhabitants of the Netherlands, cannot have a lawful effect in behalf of the King's subjects, or of any abroad who are in subjection to the laws of the kingdom. Those who, under such circumstances, engage in or lend their aid in privateering to other people, will be considered as pirates, and prosecuted according to law in the Netherlands, and subjected to the punishment provided for the commission of such offenses.

The ministers above named.

[Translation.]

THE HAGUE, *June*, 1861.

The minister for foreign affairs, apprised by a communication from the minister of marine that the King had authorized the naval force in the West Indies to be seasonably strengthened by His Majesty's steam-frigate Zealand, and the screw-propellers Diambi and Vesuvius, for the purpose of giving protection to the trade and navigation of the Netherlands during the contest which seems to be in existence in the United States of North America, wherever it may be desired, therefore esteems it to be his duty to direct the attention of shipmasters, consignees, and freighters, to the peril to which their insurance against loss will be exposed by any violation of the obligations imposed on neutral powers to respect actual blockades, and not to carry contraband of war or dispatches of belligerents.

In these cases they will be subject to all the resulting losses that may follow, without the benefit of any protection or intervention on the part of His Majesty's government. Of which take notice.

The minister above named.

PORTUGAL.

[Translation.]

PALACE OF NECESSIDADES, *July* 29, 1861.

It being proper, in view of the circumstances at present existing in regard to the United States of America, to carry into effect the principles established in the declaration of Paris of April 16, 1856, made by the representatives of the powers that signed the treaty of peace of the 30th of March of that year, to which declaration my government acceded, and likewise, for the same reason, to adopt other measures which I deem opportune, I have been pleased, after hearing the council of state, to decree as follows:

ARTICLE 1. In all the ports and waters of this kingdom, as well on the continent and in the adjacent islands as in the ultramarine provinces, Portuguese subjects and foreigners are prohibited from fitting out vessels destined for privateering.

ARTICLE 2. In the same ports and waters referred to in the preceding article, is, in like manner, prohibited the entrance of privateers and of the prizes made by the privateers, or by armed vessels.

The cases of overruling necessity (*força maior*) in which, according to the law of nations, hospitality is indispensable, are excepted from this regulation, without permission, however, being allowed, in any manner, for the sale of any objects proceeding from prizes.

The ministers and secretaries of state in all the departments will thus understand, and cause it to be executed.

(Signed) KING.

(Countersigned)

MARQUEZ DE LOULE.
ALBERTO ANTONIO DE MORAES CARVALHO.
VISCONDE DE SA DA BANDEIRA.
CARLOS BENTO DA SILVA.
THIAGO AUGUSTO VELLOSO DE HORTA.
ANTONIO JOSÉ D'AVILA.

HAWAIIAN ISLANDS.

Proclamation of the King of the Hawaiian Islands declaring the neutrality of the Hawaiian Islands in the war between the United States and the so-called Confederate States.

KAILUA, *August* 26, 1861.

Be it known to all whom it may concern that we, Kamehameha IV, King of the Hawaiian Islands, having been officially notified that hostilities are now unhappily pending between the Government of the United States and certain States thereof, styling themselves "the Confederate States of America," hereby proclaim our neutrality between the said contending parties.

That our neutrality is to be respected to the full extent of our jurisdiction, and that all captures and seizures made within the same are unlawful, and in violation of our rights as a sovereign.

And be it further known that we hereby strictly prohibit all our subjects, and all who reside or may be within our jurisdiction, from engaging either directly or indirectly in privateering against the shipping or commerce of either of the contending parties, or of rendering any aid to such enterprises whatever; and all persons so offending will be liable to the penalties imposed by the laws of nations, as well as by the laws of said States, and they will in no wise obtain any protection from us as against any penal consequences which they may incur.

Be it further known that no adjudication of prizes will be entertained within our jurisdiction, nor will the sale of goods or other property belonging to prizes be allowed.

Be it further known that the rights of asylum are not extended to the privateers or their prizes of either of the contending parties, excepting only in cases of distress or of compulsory delay by stress of weather or dangers of the sea, or in such cases as may be regulated by treaty stipulation.

Given at our marine residence of Kailua, this 26th day of August, A. D. 1861, and the seventh of our reign.

By the King.

(Signed) KAMEHAMEHA.

By the King and Kuhina Nui.

KAAHUMANU.

R. C. WYLLIE.

[72 *BREMEN.

Ordinance of senate against privateering.

[Translation.]

(Published July 4, 1861.)

The senate finds it necessary, in regard to the events which have occurred in North America, to renew the regulations contained in its ordinance of April 29, 1854, and accordingly makes the following notification for general observance:

1. All subjects of the State of Bremen are forbidden, under severe penalties, both from meddling in any way with privateering and from taking part therein, either by fitting out privateers themselves, or contributing through others to the same.

2. The proper officers are ordered not on any account to allow the fitting out or provisioning of privateers, under whatever flag or carrying whatever letters of marque, in any port of the Bremen territory, nor to admit into a Bremen port any such privateers, or the prizes made by them, except in cases of proved stress of weather at sea.

Resolved at Bremen, in the assembly of the senate, on the 2d, and published on the 4th of July, 1861.

HAMBURG.

Ordinance against privateering.

[Translation.]

On the occasion of the events which have taken place in the United States of North America, the senate reminds the public that, according to the notification of July 7, 1856, relative to the declaration of the congress of Paris on the application of maritime law in time of war, privateering is entirely abolished, and therefore it is prohibited to engage in any way in privateering, or to take part in it either in fitting out privateers or by assisting others to do so. The proper orders have also been issued not

to allow in Hamburg ports the fitting out or provisioning of privateers, under whatever flag or furnished with whatever letters of marque, and not to admit into Hamburg ports or roadsteads any such privateers, with or without prizes, except in cases of proved stress of weather at sea.

Given in the assembly of the senate, Hamburg, July 19, 1861.

APPENDIX No. V.

BRITISH PROCLAMATIONS OF NEUTRALITY.

I.—SPAIN AND SPANISH AMERICA.

A proclamation prohibiting His Majesty's natural-born subjects from serving, or enlisting, or entering themselves to serve in the military forces or ships of war, raised or set forth by the persons exercising or assuming to exercise the powers of government in certain provinces and parts of provinces in Spanish America, or in the military forces of His Catholic Majesty employed in Spanish America, or in his said Majesty's ships of war, 27th November, 1817.

GEORGE, P. R.

Whereas there unhappily subsists a state of warfare between His Catholic Majesty and divers provinces or parts of provinces in Spanish America; and whereas it has been represented to us that many of our subjects have, without our leave or license, enlisted or entered themselves to serve in the military forces or ships of war raised or set forth by the persons exercising or assuming to exercise the powers of government in such provinces or parts of provinces, and that divers others of our subjects are about, in like manner, to enter and enlist themselves; and whereas such practices are highly prejudicial to, and tend to the peace and welfare of our crown and dominions, we do therefore hereby, by and with the advice of our privy council, strictly charge and command all and every of our natural-born subjects, of what degree or quality soever, not to serve in any such military forces or ships of war as aforesaid, and not to enlist or enter themselves to serve therein, and not to go beyond the seas, or embark in order to serve, or with intent to enter or enlist themselves to serve in such military forces or ships of war; and it is at the same time our royal will and pleasure, and we do, by and with the advice aforesaid, hereby also strictly charge and command all and every of our said subjects not to serve or enlist, or enter themselves to serve, in any of the military forces or ships of war raised or set forth, or to be raised or set forth, by His Catholic Majesty, and not to go beyond the seas, or embark, in order or to the intent to serve, or enter, or enlist themselves to serve in any such military forces or ships of war; it is, nevertheless, our royal will and pleasure, that nothing herein contained shall be deemed or taken to prohibit any of our subjects who are engaged at the time of the date of this our proclamation, in serving in the military forces of His Catholic Majesty, with our leave or license from continuing to serve therein, provided that such our said subjects do not serve with the military forces of His Catholic Majesty, when employed in Spanish America; and we do hereby, by and with the advice aforesaid, strictly require all our said subjects duly to conform to our commands herein contained, under pain of our highest displeasure, and the utmost forfeitures, penalties, and punishments to which by law they will otherwise be liable.

Given at our court at Brighton, the 27th day of November, 1817, in the fifty-eighth year of His Majesty's reign.

God save the King.

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[73] II.

British proclamation for putting in execution the law made to prevent the enlisting or engagement of His Majesty's subjects in foreign service, and the fitting out or equipping in His Majesty's dominions vessels for warlike purposes without His Majesty's license, 6th June, 1823.

GEORGE R.

Whereas hostilities at this time exist between different states and countries in Europe and America, and it is His Majesty's determination to observe the strictest neutrality with respect to the states and countries engaged in such hostilities; and

whereas His Majesty has been informed that attempts have been made to induce His Majesty's subjects to engage in such hostilities, by entering into the military and naval service of some of the states and countries without His Majesty's leave or license;

And whereas by an act, made and passed in the fifty-ninth year of the reign of his late Majesty of blessed memory, intituled "An act to prevent the enlisting or engagement of His Majesty's subjects to serve in foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes without His Majesty's license:"

It is, among other things, enacted "that if any natural-born subject of His Majesty," &c. (Second clause of the foreign-enlistment act.)

And it is further enacted "that it shall and may be lawful for any justice of the peace * * * * * according to law for the said offense." (First paragraph of the third clause of the foreign-enlistment act.)

And it is further enacted "that in case any ship or vessel," &c. (Fifth clause of the foreign-enlistment act.)

And it is further enacted "that if any master or person," &c. (Sixth clause of the foreign-enlistment act.)

And it is further enacted "that if any person within any part of the United Kingdom," &c. (Seventh clause of the foreign-enlistment act.)

And it is further enacted "that if any person in any part of the United Kingdom," &c. (Eighth clause of the foreign-enlistment act.)

His Majesty, therefore, being resolved to cause the provisions of the said statute to be effectually put in execution, and being desirous that none of His Majesty's subjects should unwarily subject themselves to the penalties thereby inflicted, hath thought fit, by and with the advice of his privy council, to issue this his royal proclamation, and doth hereby strictly command that no person or persons whatsoever do presume to commit or attempt any act, matter, or thing whatsoever, contrary to the provisions of the said statute, and the tone, intent, and meaning thereof, and that the said provisions of the said statute be punctually observed and kept, upon pain of the several penalties by the said statute inflicted upon offenders against the same, and of His Majesty's high displeasure.

Given at our court at Carleton House this 6th day of June, 1823, and in the fourth year of our reign.

God save the King.

III.—GREECE AND TURKEY.

(30 September, 1825.)

GEORGE R.

Whereas His Majesty, being at peace with all the powers and states of Europe and America, has repeatedly declared his royal determination to maintain a strict and impartial neutrality in the different contests in which certain of these powers and states are engaged;

And whereas the commission of acts of hostility by individual subjects of His Majesty against any power or state, or against the persons and properties of the subjects of any power or state which, being at peace with His Majesty, is at the same time engaged in a contest with respect to which His Majesty has declared his determination to be neutral, is calculated to bring into question the sincerity of His Majesty's declaration;

And whereas if His Majesty's subjects cannot be effectually restrained from such unwarranted commission of acts of hostility, it may be justly apprehended that the governments aggrieved thereby might be unable, on their part, to restrain their subjects from committing acts of violence upon the persons and property of unoffending subjects of His Majesty;

And whereas the Ottoman Porte, a power at peace with His Majesty, is and has been for some years past engaged in a contest with the Greeks, in which contest His Majesty has observed a strict and impartial neutrality;

And whereas great numbers of His Majesty's loyal subjects reside and carry on a beneficial commerce, and possess establishments, and enjoy privileges within the dominions of the Ottoman Porte, protected by the faith of treaties between His Majesty and that power;

And whereas His Majesty has received recent and undoubted information that attempts are now making to induce certain of His Majesty's subjects to fit out ships of war and privateers in the ports of His Majesty's kingdom, and to embark therein for the purpose of carrying on, under the Greek flag, hostile operations against the Ottoman government, of capturing and destroying Turkish ships and property, and of committing depredations on the coasts of the Turkish dominions;

And whereas such hostile operations would be directly contrary to the provisions of

the act passed in the fifty-ninth year of the reign of his late Majesty, (cap. 63.) entitled "An act to prevent the enlisting or engagement of His Majesty's subjects to serve in foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes, without His Majesty's license," in which it is, among other things, enacted "That if any natural-born subject," &c. (Second clause of the foreign-enlistment act.)

And it is further enacted, "That if any person," &c. (Seventh clause of the foreign-enlistment act.)

His Majesty, therefore, being desirous of preserving to his subjects the blessings of peace which they now happily enjoy, and being resolved to persevere in that system of neutrality which His Majesty has so repeatedly declared his determination to maintain; in order that none of His Majesty's subjects may unwarily render themselves liable to the penalties imposed by the statute herein mentioned, has thought fit, by and with the advice of his privy council, to issue this his royal proclamation.

And His Majesty does hereby strictly command that no person or persons whatsoever do presume to take part in any of the said contests, or to commit or attempt any act, matter, or thing whatsoever, contrary to the provisions of the said statute, upon pain of the several penalties by the said statute imposed, and of His Majesty's high displeasure.

And His Majesty, by and with the advice aforesaid, doth hereby enjoin all His Majesty's subjects strictly to observe, as well toward the Ottoman Porte and the Greeks, as toward all other belligerents with whom His Majesty is at peace, the duties of neutrality, and to respect in all and each of them the exercise of those belligerent rights which His Majesty has always claimed to exercise when His Majesty has himself been unhappily engaged in war.

Given at our court at Windsor, the 30th day of September, 1825, and in the sixth year of our reign.

God save the King.

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[74] * IV.—AUSTRIA, FRANCE, AND SARDINIA.

(May 13, 1859.)

By the Queen.—A proclamation.

VICTORIA R.

Whereas we are happily at peace with all sovereigns, powers, and states;

And whereas, notwithstanding our utmost exertions to preserve peace between all the sovereign powers and states now at war, hostilities have unhappily commenced between His Imperial Majesty the Emperor of Austria on the one part, and His Majesty the King of Sardinia and His Imperial Majesty the Emperor of the French on the other part;

And whereas a state of war now exists between His Imperial Majesty the Emperor of Austria on the one part, and His Majesty the King of Sardinia and His Imperial Majesty the Emperor of the French on the other part, and between their respective subjects and others inhabiting within their countries, territories, or dominions;

And whereas we are on terms of friendship and amicable intercourse with all and each of these sovereigns, and with their several subjects and others inhabiting within their countries, territories, or dominions;

And whereas great numbers of our loyal subjects reside and carry on commerce, and possess property and establishments, and enjoy various rights and privileges within the dominions of each of the aforesaid sovereigns, protected by the faith of treaties between us and each of the aforesaid sovereigns;

And whereas we, being desirous of preserving to our subjects the blessings of peace which they now happily enjoy, are firmly purposed and determined to abstain altogether from taking any part, directly or indirectly, in the war now unhappily existing between the said sovereigns, their subjects and territories, and to remain at peace with and to maintain a peaceful and friendly intercourse with all and with each of them, and their respective subjects and others inhabiting within any of their countries, territories, and dominions, and to maintain a strict and impartial neutrality in the said hostilities and war unhappily existing between them;

We therefore have thought fit, by and with the advice of our privy council, to issue this our royal proclamation.

And we do hereby strictly charge and command all our loving subjects to govern themselves accordingly, and to observe a strict neutrality in and during the aforesaid hostilities and war, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril.

And whereas in and by a certain statute made and passed in the fifty-ninth year of

His Majesty King George III. (cap. 69.) entitled "An act to prevent the enlisting or engagement of His Majesty's subjects to serve in a foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes without His Majesty's license," it is among other things declared and enacted as follows: "That if any person within any part of the United Kingdom," &c. (Seventh clause of the foreign-enlistment act.)

And it is in and by the said act further enacted "That if any person in any part of the United Kingdom," &c. (Eighth clause of the foreign-enlistment act.)

Now, in order that none of our subjects may unwarily render themselves liable to the penalties imposed by the said statute, we do hereby strictly command that no person or persons whatsoever do commit any act, matter, or thing whatsoever contrary to the provisions of the said statute, upon pain of the several penalties by the said statute imposed, and of our high displeasure.

And we do hereby further warn and admonish all our loving subjects, and all persons whatsoever entitled to our protection, to observe toward each and all of the aforesaid sovereigns, their subjects and territories, and toward all belligerents whatsoever with whom we are at peace, the duties of neutrality; and to respect, in all and each of them, the exercise of those belligerent rights which we and our royal predecessors have always claimed to exercise.

And we do hereby further warn all our loving subjects, and all persons whatsoever entitled to our protection, that if any of them shall presume, in contempt of this our royal proclamation, and of our high displeasure, to do any acts in derogation of their duty as subjects of a neutral sovereign, in a war between other sovereigns, or in violation or contravention of the law of nations in that behalf, as more especially by breaking, or endeavoring to break, any blockade lawfully and actually established by or on behalf of any or either of the said sovereigns, by carrying officers, soldiers, dispatches, arms, ammunition, military stores, or materials, or any article or articles considered and deemed to be contraband of war according to the law or modern usages of nations, for the use or service of any or either of the said sovereigns, that all persons so offending, together with their ships and goods, will rightfully incur, and be justly liable to, hostile capture, and to the penalties denounced by the law of nations in that behalf.

And we do hereby give notice that all our subjects, and persons entitled to our protection who may misconduct themselves in the premises, will do so at their peril, and of their own wrong; and that they will in nowise obtain any protection from us against such capture, or such penalties as aforesaid, but will, on the contrary, incur our high displeasure by such misconduct.

Given at our court at Buckingham Palace this 13th day of May, in the year of our Lord 1859, and in the twenty-second year of our reign.

God save the Queen.

V.—UNITED STATES.

(May 13, 1861.)

By the Queen.—A proclamation.

VICTORIA R.

Whereas we are happily at peace with all sovereigns, powers, and states;

And whereas hostilities have unhappily commenced between the Government of the United States of America and certain States styling themselves the Confederate States of America;

And whereas we, being at peace with the Government of the United States, have declared our royal determination to maintain a strict and impartial neutrality in the contest between the said contending parties;

We therefore have thought fit, by and with the advice of our privy council, to issue this our royal proclamation:

And we do hereby strictly charge all our loving subjects to observe a strict neutrality in and during the aforesaid hostilities, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril;

[75] And whereas in and by a certain statute made and passed in the fifty-ninth year of His Majesty King George the III. entitled "An act to prevent the enlisting or engagement of His Majesty's subjects to serve in a foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes, without His Majesty's license," it is among other things declared and enacted as follows: "That if any natural-born subject of His Majesty," &c. (Second clause of the foreign-enlistment act.)

And it is in and by the said act further enacted, "That if any person within any part of the United Kingdom," &c. (Seventh clause of the foreign-enlistment act.)

And it is in and by the said act further enacted, "That if any person within any part of the United Kingdom," &c. (Eighth clause of the foreign-enlistment act.)

Now, in order that none of our subjects may unwarily render themselves liable to the penalties imposed by the said statute, we do hereby strictly command that no person or persons whatsoever do commit any act, matter, or thing whatsoever contrary to the provisions of the said statute, upon pain of the several penalties by the said statute imposed, and of our high displeasure.

And we do hereby further warn all our loving subjects, and all persons whatsoever entitled to our protection, that if any of them shall presume, in contempt of this our royal proclamation, and of our high displeasure, to do any acts in derogation of their duty as subjects of a neutral sovereign in the said contest, or in violation or contravention of the law of nations in that behalf; as, for example, and more especially, by entering into the military service of either of the said contending parties as commissioned or non-commissioned officers or soldiers; or by serving as officers, sailors, or marines on board any ship or vessel of war or transport of or in the service of either of the said contending parties; or by serving as officers, sailors, or marines on board any privateer bearing letters of marque of or from either of the said contending parties; or by engaging to go or going to any place beyond the seas with intent to enlist or engage in any such service, or by procuring or attempting to procure, within Her Majesty's dominions at home or abroad, others to do so; or by fitting out, arming, or equipping any ship or vessel to be employed as a ship of war or privateer or transport by either of the said contending parties; or by breaking or endeavoring to break any blockade lawfully and actually established by or on behalf of either of the said contending parties; or by carrying officers, soldiers, dispatches, arms, military stores, or materials, or any article or articles considered and deemed to be contraband of war, according to the law or modern usage of nations, for the use or service of either of the said contending parties, all persons so offending will incur and be liable to the several penalties and penal consequences by the said statute or by the law of nations in that behalf imposed or denounced.

And we do hereby declare that all our subjects and persons entitled to our protection who may misconduct themselves in the premises will do so at their peril and of their own wrong, and that they will in nowise obtain any protection from us against any liabilities or penal consequences, but will, on the contrary, incur our high displeasure by such misconduct.

Given at our court at the White Lodge, Richmond Park, this thirteenth day of May, in the year of our Lord one thousand eight hundred and sixty-one, and in the twenty-fourth year of our reign.

God save the Queen.

VI.—SPAIN AND CHILI.

(6th February, 1866.)

By the Queen.—A proclamation.

VICTORIA.

Whereas we are happily at peace with all sovereigns, powers, and states;

And whereas hostilities have unhappily commenced between the government of Spain and the government of the republic of Chili;

And whereas we, being at peace with both the said governments, have declared our royal determination to maintain a strict and impartial neutrality in the contest between the said contending parties:

We therefore have thought fit, by and with the advice of our privy council, to issue this our royal proclamation:

And we do hereby strictly charge and command all our loving subjects to observe a strict neutrality in and during the aforesaid hostilities, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril.

And whereas, in and by a certain statute made and passed in the fifty-ninth year of His Majesty King George the III, entitled "An act to prevent the enlisting or engagement of His Majesty's subjects to serve in a foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes, without His Majesty's license," it is, among other things, declared and enacted as follows: "That if any natural-born subject of His Majesty," &c., (second clause of the foreign-enlistment act.)

And it is in and by the said act further enacted, "That if any person within any part of the United Kingdom," &c., (seventh clause of the foreign-enlistment act.)

And it is in and by the said act further enacted, "That if any person in any part of the United Kingdom," &c., (eighth clause of the foreign-enlistment act.)

Now, in order that none of our subjects may unwarily render themselves liable to the penalties imposed by the said statute, we do hereby strictly command that no person or persons whatsoever do commit any act, matter, or thing whatsoever contrary to the provisions of the said statute, upon pain of the several penalties by the statute imposed, and of our high displeasure.

And we do hereby further warn all our loving subjects, and all persons whatsoever entitled to our protection, that if any of them shall presume, in contempt of this our royal proclamation, and of our high displeasure, to do any acts in derogation of their duty as subjects of a neutral sovereign, in the said contest, or in violation or contravention of the law of nations in that behalf, as, for example, and more especially, by entering into the military service of either of the said contending parties as commissioned or non-commissioned officers or soldiers; or by serving as officers, sailors, or marines on board any ship or vessel of war or transport of or in the service of either of the said contending parties, or by serving as officers, sailors, or marines on board any privateers bearing letters of marque of or from either of the said contending parties; or by engaging to go or going to any place beyond the seas, with intent to enlist or engage in any such service, or by procuring or attempting to procure, within Her Majesty's dominions at home or abroad, others to do so; or by fitting out, arming, or equipping any ship or vessel to be employed as a ship of war or privateer or transport by either of the said contending parties; or by breaking or endeavoring to break
[76] any blockade lawfully and actually established * by or on behalf of either of the said contending parties; or by carrying officers, soldiers, dispatches, arms, military stores or materials, or any article or articles considered and deemed to be contraband of war, according to the law or modern usage of nations, for the use or service of either of the said contending parties, all persons so offending will incur and be liable to the several penalties and penal consequences by the said statute or by the law of nations in that behalf imposed or denounced.

And we do hereby declare that all our subjects and persons entitled to our protection who may misconduct themselves in the premises will do so at their peril and of their own wrong, and that they will in nowise obtain any protection from us against any liabilities or penal consequences, but will, on the contrary, incur our high displeasure by such misconduct.

Given at our court at Osborne House, Isle of Wight, this third day of February in the year of our Lord one thousand eight hundred and sixty-six, and in the twenty-ninth year of our reign.

God save the Queen.

VII.—SPAIN AND PERU.

(13th March, 1866.)

The same as the preceding (Spain and Chili) *mutatis mutandis*.

VIII.—AUSTRIA, PRUSSIA, ITALY, GERMANY.

By the Queen.—A proclamation.

VICTORIA R.

Whereas we are happily at peace with all sovereigns, powers, and states;

And whereas, notwithstanding our utmost exertions to preserve peace between all the sovereign powers and states now at war, hostilities have unhappily commenced between His Imperial Majesty the Emperor of Austria, His Majesty the King of Prussia, His Majesty the King of Italy, and the Germanic Confederation;

And whereas a state of war now exists between his Imperial Majesty the Emperor of Austria, His Majesty the King of Prussia, His Majesty the King of Italy, and the Germanic Confederation, and between their respective subjects and others inhabiting within their countries, territories, or dominions;

And whereas we are on terms of friendship and amicable intercourse with all and each of these sovereigns, and with the Germanic Confederation, and with their several subjects and others inhabiting within their countries, territories, or dominions;

And whereas great numbers of our loyal subjects reside and carry on commerce, and possess property and establishments, and enjoy various rights and privileges, within the dominions of each of the aforesaid sovereigns and states, protected by the faith of treaties between us and each of the aforesaid sovereigns and states;

And whereas we, being desirous of preserving to our subjects the blessings of peace, which they now happily enjoy, are firmly purposed and determined to abstain altogether from taking any part, directly or indirectly, in the war now unhappily existing between the said sovereigns and states, their subjects and territories, and to remain at peace with and to maintain a peaceful and friendly intercourse with all and with each of them, and their respective subjects and others inhabiting within any of their countries, territories, and dominions, and to maintain a strict and impartial neutrality in the said hostilities and war unhappily existing between them:

We therefore have thought fit, by and with the advice of our privy council, to issue this our royal proclamation.

And we do hereby strictly charge and command all our loving subjects to govern themselves accordingly, and to observe a strict neutrality in and during the aforesaid hostilities and war, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril.

And whereas, in and by a certain statute made and passed in the fifty-ninth year of His Majesty King George the Third, entitled "An act to prevent the enlisting or engagement of His Majesty's subjects to serve in a foreign service, and the fitting out or equipping in His Majesty's dominions vessels for warlike purposes, without His Majesty's license," it is, among other things, declared and enacted as follows: "That if any person within any part of the United Kingdom," &c., (seventh clause of the foreign-enlistment act.)

And it is in and by the said act further enacted, "That if any person in any part of the United Kingdom," &c., (eighth clause of the foreign-enlistment act.)

Now, in order that none of our subjects may unwarily render themselves liable to the penalties imposed by the said statute, we do hereby strictly command that no person or persons whatsoever do commit any act, matter, or thing whatsoever contrary to the provisions of the said statute, upon pain of the several penalties by the said statute imposed, and of our high displeasure.

And we do hereby further warn and admonish all our loving subjects, and all persons whatsoever entitled to our protection, to observe toward each and all of the aforesaid sovereigns and states, their subjects and territories, and toward all belligerents whatsoever, with whom we are at peace, the duties of neutrality; and to respect, in all and each of them, the exercise of those belligerent rights which we and our royal predecessors have always claimed to exercise.

And we do hereby further warn all our loving subjects, and all persons whatsoever entitled to our protection, that if any of them shall presume, in contempt of this our royal proclamation and of our high displeasure, to do any acts in derogation of their duty as subjects of a neutral sovereign, in a war between other sovereigns and states, or in violation or contravention of the law of nations in that behalf, as more especially by breaking or endeavoring to break any blockade lawfully and actually established by or on behalf of any or either of the said sovereigns and states, by carrying officers, soldiers, dispatches, arms, ammunition, military stores or materials, or any article or articles considered and deemed to be contraband of war, according to the law or modern usages of nations, for the use or service of any or either of the said sovereigns and states, that all persons so offending, together with their ships and goods, will rightfully incur and be justly liable to hostile capture, and to the penalties denounced by the law of nations in that behalf.

And we do hereby give notice that all our subjects and persons entitled to our protection who may misconduct themselves in the premises will do so at their peril and of their own wrong; and that they will in nowise obtain any protection from us against such capture or such penalties as aforesaid, but will, on the contrary, incur our high displeasure by such misconduct.

Given at our court at Windsor, this twenty-seventh day of June, in the year of our Lord one thousand eight hundred and sixty-six, and in the thirtieth year of our reign.

God save the Queen.

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[77] *Appendix No. VI.

REGULATIONS AND INSTRUCTIONS PUBLISHED BY HER MAJESTY'S GOVERNMENT DURING THE CIVIL WAR IN THE UNITED STATES, 1861–'65.

Letter from the foreign office to the admiralty, colonial, war, and India offices, interdicting armed cruisers and privateers, whether of the United States of North America or the so-styled Confederate States, from carrying prizes into British ports, June 1, 1861.

Foreign Office, *June* 1, 1861.

My Lords: Her Majesty's government are, as you are aware, desirous of observing

the strictest neutrality in the contest which appears to be imminent between the United States and the so-styled Confederate States of North America; and with the view more effectually to carry out this principle they propose to interdict the armed ships, and also the privateers of both parties, from carrying prizes made by them into the ports, harbors, roadsteads, or waters of the United Kingdom or of any of Her Majesty's colonies or possessions abroad.

I have accordingly to acquaint your lordships that the Queen has been pleased to direct that orders in conformity with the principles above stated should forthwith be addressed to all proper authorities in the United Kingdom, and to Her Majesty's naval or other authorities in all quarters beyond the United Kingdom, for their guidance in the circumstances.

I have, &c.,
(Signed) J. RUSSELL.

The LORDS COMMISSIONERS OF THE ADMIRALTY.

NOTE.—A similar letter was addressed on the same day to each of the secretaries of State for India, war, and the colonies.

2.—Extract from the London Gazette of the 15th December, 1863.

Letter from Earl Russell to the lords commissioners of the admiralty, and dispatch from the Duke of Newcastle to the governor of the Bahamas.

FOREIGN OFFICE, *January* 31, 1862.

MY LORDS: Her Majesty being fully determined to observe the duties of neutrality during the existing hostilities between the United States and the States calling themselves "the Confederate States of America," and being, moreover, resolved to prevent, as far as possible, the use of Her Majesty's harbors, ports, and coasts, and the waters within Her Majesty's territorial jurisdiction, in aid of the warlike purposes of either belligerent, has commanded me to communicate to your lordships, for your guidance, the following rules, which are to be treated and enforced as Her Majesty's orders and directions:

Her Majesty is pleased further to command that these rules shall be put in force in the United Kingdom and in the Channel Islands on and after Thursday the 6th day of February next, and in Her Majesty's territories and possessions beyond the seas, six days after the day when the governor or other chief authority of each of such territories or possessions respectively shall have notified and published the same, stating in such notification that the said rules are to be obeyed by all persons within the same territories and possessions.

I. During the continuance of the present hostilities between the Government of the United States of North America and the States calling themselves "the Confederate States of America," or until Her Majesty shall otherwise order, no ship of war or privateer belonging to either of the belligerents shall be permitted to enter or remain in the port of Nassau, or in any other port, roadstead, or waters of the Bahama Islands, except by special leave of the lieutenant-governor of the Bahama Islands, or in case of stress of weather. If any such vessel should enter any such port, roadstead, or waters by special leave or under stress of weather, the authorities of the place shall require her to put to sea as soon as possible, without permitting her to take in any supplies beyond what may be necessary for her immediate use.

If, at the time when this order is first notified in the Bahama Islands, there shall be any such vessel already within any port, roadstead, or waters of those islands, the lieutenant-governor shall give notice to such vessel to depart, and shall require her to put to sea within such time as he shall, under the circumstances, consider proper and reasonable. If there shall then be ships of war or privateers belonging to both the said belligerents within the territorial jurisdiction of Her Majesty, in or near the same port, roadstead, or waters, the lieutenant governor shall fix the order of time in which such vessels shall depart. No such vessel of either belligerent shall be permitted to put to sea until after the expiration of at least twenty-four hours from the time when the last preceding vessel of the other belligerent (whether the same shall be a ship of war, or privateer, or merchant ship) which shall have left the same port, roadstead, or waters, or waters adjacent thereto, shall have passed beyond the territorial jurisdiction of Her Majesty.

II. During the continuance of the present hostilities between the Government of the United States of North America and the States calling themselves "the Confederate States of America," all ships of war and privateers of either belligerent are prohibited from making use of any port or roadstead in the United Kingdom of Great Britain and Ireland or in the Channel Islands, or in any of Her Majesty's colonies or foreign possessions or dependencies, or of any waters subject to the territorial jurisdiction of the British Crown, as a station or place of resort for any warlike purpose, or for the purpose of obtaining any facilities of warlike equipment; and no ship of war or privateer of either belligerent shall hereafter be permitted to sail out of or leave any port, roadstead, or waters

subject to British jurisdiction, from which any vessel of the other belligerent (whether the same shall be a ship of war, a privateer, or a merchant ship) shall have previously departed, until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the territorial jurisdiction of Her Majesty.

III. If any ship of war or privateer of either belligerent shall, after the time when this order shall be first notified and put in force in the United Kingdom and in the Channel Islands, and in the several colonies and foreign possessions and dependencies of Her Majesty, respectively, enter any port, roadstead, or waters belonging to Her Majesty, either in the United Kingdom or in the Channel Islands, or in any of Her Majesty's colonies or foreign possessions or dependencies, such vessel shall be required to depart and to put to sea within twenty-four hours after her entrance into such port, roadstead, or waters, except in case of stress of weather, or of her requiring provisions or things necessary for the subsistence of her crew or repairs; in either of which cases the authorities of the port, or of the nearest port, (as the case may be,) shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies, beyond what may be necessary for her immediate use; and no such vessel, which may have been allowed to remain within British waters for the purpose of repair, shall continue in any such port, roadstead,
[78] or waters for a longer period *than twenty-four hours after her necessary repairs shall have been completed: Provided, nevertheless, that in all cases in which there shall be any vessels (whether ships of war, privateers, or merchant ships) of both the said belligerent parties in the same port, roadstead, or waters within the territorial jurisdiction of Her Majesty, there shall be an interval of not less than twenty-four hours between the departure therefrom of any such vessel (whether a ship of war, a privateer, or a merchant ship) of the one belligerent, and the subsequent departure therefrom of any ship of war or privateer of the other belligerent; and the times hereby limited for the departure of such ships of war and privateers, respectively, shall always, in case of necessity, be extended so far as may be requisite for giving effect to this proviso, but not further or otherwise.

IV. No ship of war or privateer of either belligerent shall hereafter be permitted, while in any port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, to take in any supplies, except provisions and such other things as may be requisite for the subsistence of her crew; and except so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer destination; and no coal shall be again supplied to any such ship of war or privateer in the same or any other port, roadstead, or waters subject to the territorial jurisdiction of her Majesty without special permission until after the expiration of three months from the time when such coal may have been last supplied to her within British waters as aforesaid.

I have, &c.,
(Signed) RUSSELL.

NOTE.—A similar letter has been addressed to the secretaries of state for the home, colonial, war, and India departments, and to the lords commissioners of Her Majesty's treasury.

DOWNING STREET, *October* 6, 1863.

SIR: Doubts having been expressed as to whether, under the regulations of the 31st January, 1862, which were embodied in a proclamation issued by you on the 11th March following, it is required that the commander of a belligerent ship of war or privateer should obtain the permission of the local authorities before entering the ports, roadsteads, or waters of the Bahamas out-islands when the governor is not there present, I am to acquaint you that Earl Russell has taken Her Majesty's pleasure thereupon, and you are to understand that at the ports of the out-islands, as at Nassua, the special leave of the governor himself is required (unless in stress of weather) by any belligerent vessel desiring to enter, with this exception only, that in cases of grave emergency and real necessity and distress, such as a sailing-vessel being dismasted or accident happening to the machinery of a steam-vessel, the vessel may enter the ports, roadsteads, or waters on obtaining leave from a resident officer, to whom the governor shall have delegated his authority in that behalf.

With a view to give effect to Her Majesty's intentions, you will be pleased to convey to the officers in the out-islands, to whom it may best be confided, the authority in question, taking care to communicate to them copies of the regulations of the 31st January, 1862, and calling their especial attention to the limits of the authority delegated, and to that clause of the regulations of 31st January, 1862, in which it is directed that vessels entering under stress of weather or by special leave shall be required to put to sea as soon as possible.

I have, &c.,
(Signed) NEWCASTLE.

Governor BAYLEY, C. B., *&c.*, *&c.*, *&c.*

Return to an address of the honorable the House of Commons, dated 3 June, 1864, for "copy of any additional instructions to colonial governors on the subject of belligerent cruisers."

COLONIAL OFFICE, June 6, 1864.

FREDERICK ROGERS.

Circular instructions to governors of colonies respecting the treatment of prizes captured by Federal or confederate cruisers if brought into British waters.

DOWNING STREET, *June* 2, 1864.

SIR: I think it well to communicate to you the decisions at which Her Majesty's government have arrived on certain questions which have arisen respecting the treatment of prizes captured by Federal or confederate cruisers if brought into British waters.

1. If any prize captured by a ship of war of either of the belligerent powers shall be brought by the captors within Her Majesty's jurisdiction, notice shall be given by the governor to the captors immediately to depart and remove such prize.

2. A vessel which shall have been actually and *bona fide* converted into and used as a public vessel of war shall not be deemed to be a prize within the meaning of these rules.

3. If any prize shall be brought within Her Majesty's jurisdiction through mere stress of weather, or other extreme and unavoidable necessity, the governor may allow for her removal such time as he may consider to be necessary.

4. If any prize shall not be removed at the time prescribed to the captors by the governor, the governor may detain such prize until Her Majesty's pleasure shall be made known.

5. If any prize shall have been captured by any violation of the territory or territorial waters of Her Majesty, the governor may detain such prize until Her Majesty's pleasure shall be made known.

Her Majesty's government have not thought it necessary to make any addition to the instructions already given with respect to cargoes, viz, that Her Majesty's orders apply as much to prize cargoes of every kind which may be brought by any armed ships or privateers of either belligerent into British waters as to the captured vessels themselves. They do not, however, apply to any articles which may have formed part of any such cargoes if brought within British jurisdiction, not by armed ships or privateers of either belligerent but by other persons who may have acquired or may claim property in them by reason of any dealings with the captors.

These rules are for the guidance of the executive authority, and are not intended to interfere in any way with the process of any court of justice.

I have, &c.,

(Signed) EDWARD CARDWELL.

London Gazette, September 9, 1864.

FOREIGN OFFICE, *September* 8, 1864.

It is hereby notified that Her Majesty has been pleased to order that for the future no ship of war belonging to either of the belligerent powers of North America shall be allowed to enter, or to remain, or be in any of Her Majesty's ports for the purpose of being dismantled or sold; and Her Majesty has been pleased to give directions to the commissioners of Her Majesty's customs and to the governors of Her Majesty's colonies and foreign possessions to see that this order is properly carried into effect.

Extract from the London Gazette of May 19, 1865.

Letter from Earl Russell to the lords commissioners of the admiralty.

FOREIGN OFFICE, *May* 11, 1865.

MY LORDS: I have the honor to acquaint you that, in the existing state of the civil war in America, and the uncertainty which may be felt as to its continuance, it [79] *appears to Her Majesty's government that the time has arrived for ceasing to enforce so much of the orders which, in pursuance of my letter of the 31st of January, 1862, were issued by the several departments of Her Majesty's government, as empowered the authorities of any port belonging to Her Majesty either in the United

Kingdom or the Channel Islands, or in any of Her Majesty's colonies or foreign possessions or dependencies, to require any ship of war or privateer of either belligerent which may enter any port, roadstead, or waters belonging to Her Majesty in order to obtain provisions or things necessary for the subsistence of her crew or to effect repairs, to put to sea as soon as possible after the expiration of a period of twenty-four hours, without permitting her to take in supplies beyond what might be necessary for her immediate use; and not to suffer any such vessel as might have been allowed to remain within British waters for the purpose of repair to continue in any port, roadstead, or waters belonging to Her Majesty for a longer period than twenty-four hours after her necessary repairs should have been completed; and also so much of the same orders as limited the quantity of coal and the period within which it might be obtained to be embarked on board any such ship of war or privateer of either belligerent.

I have addressed a similar letter to the secretaries of state for the home, colonial, war, and India departments, and to the lords commissioners of Her Majesty's treasury.

(Signed) RUSSELL.

NOTE.—A similar letter has been addressed to the secretaries of state for the home, colonial, war, and India departments, and to the lords commissioners of Her Majesty's treasury.

Extract from the London Gazette of June 6, 1865.

Letter from Earl Russell to the lords commissioners of the admiralty.

FOREIGN OFFICE, *June* 2, 1865.

MY LORDS: I have the honor to state to your lordships that since the date of my letter of the 11th ultimo intelligence has reached this country that the late president of the so-called Confederate States has been captured by the military forces of the United States, and has been transported as a prisoner to Fort Monroe, and that the armies hitherto kept in the field by the Confederate States have, for the most part, surrendered or dispersed.

In this posture of affairs Her Majesty's government are of opinion that neutral nations cannot but consider the civil war in North America as at an end.

In conformity with this opinion Her Majesty's government recognize that peace has been restored within the whole territory of which the United States of North America before the commencement of the civil war were in undisturbed possession.

As a necessary consequence of such recognition on the part of Her Majesty's government, Her Majesty's several authorities in all ports, harbors, and waters belonging to Her Majesty, whether in the United Kingdom or beyond the seas, must henceforth refuse permission to any vessel of war carrying a confederate flag to enter any such ports, harbors, and waters; and must require any confederate vessels of war which, at the time when these orders reach Her Majesty's authorities in such ports, harbors, and waters may have already entered therein on the faith of proclamations heretofore issued by Her Majesty, and which, having complied with the provisions of such proclamations, may be actually within such ports, harbors, and waters, forthwith to depart from them.

But Her Majesty's government consider that a due regard for national good faith and honor requires that Her Majesty's authorities should be instructed, as regards any such confederate vessels so departing, that they should have the benefit of the prohibition heretofore enforced against pursuit of them within twenty-four hours by a cruiser of the United States lying at the time within any such ports, harbors, and waters, and that such prohibition should be then and for the last time maintained in their favor.

If, however,the commander of any confederate vessel of war which may be found in any port, harbor, or waters of Her Majesty's dominions at the time these new orders are received by Her Majesty's authorities, or may enter such port, harbor, or waters within a month after these new orders are received, should wish to divest his vessel of her warlike character, and, after disarming her, to remain without a confederate flag within British waters, Her Majesty's authorities may allow the commander of such vessel to do so at his own risk in all respects, in which case he should be distinctly apprised that he is to expect no further protection from Her Majesty's government, except such as he may be entitled to in the ordinary course of the administration of the law in time of peace.

The rule as to twenty-four hours would of course not be applicable to the case of such vessel.

I have addressed a similar letter to the secretaries of state for the home, colonial,

India, and war offices, and also to the lords commissioners of Her Majesty's treasury, requesting them, as I do your lordships, to issue instructions in conformity with the decision of Her Majesty's government to the several British authorities at home or abroad who may be called upon to act in the matter.

I am, &c.,
(Signed) RUSSELL.

NOTE.—A similar letter was addressed to the secretaries of state for the home, colonial, war, and India departments, and to the lords commissioners of Her Majesty's treasury.

APPENDIX No. VII.

Return to an address of the honorable the House of Commons, dated July 8, 1863, for "Copy of a memorial from certain ship-owners of Liverpool to the secretary of state for foreign affairs, suggesting an alteration in the foreign-enlistment act."

No. 1.

MEMORIAL.

To the Right Honorable the Earl Russell, Her Majesty's principal secretary of state for the foreign department.

The memorial of the undersigned, ship-owners of Liverpool, showeth: That your memorialists, who are deeply interested in British shipping, view with dismay the probable future consequences of a state of affairs which permits a foreign belligerent to construct in and send to sea from British ports vessels of war, in contravention of the provisions of the existing law.

That the immediate effect of placing at the disposal of that foreign belligerent a very small number of steam-cruisers has been to paralyze the mercantile marine of a powerful maritime and naval nation, inflicting within a few months losses, direct and indirect, on its ship-owning and mercantile interests which years of peace may prove inadequate to retrieve.

That your memorialists cannot shut their eyes to the probability that in any future war between England and a foreign power, however insignificant in naval
[80] strength, the example now set by subjects of Her Majesty while England is neutral may be followed by citizens of other countries, neutral when England is belligerent; and that the attitude of helplessness in which Her Majesty's government have declared their inability to detect and punish breaches of the law notoriously committed by certain of Her Majesty's subjects, may hereafter be successfully imitated by the governments of those other countries in answer to English remonstrances.

That the experience of late events has proved to the conviction of your memorialists that the possession by a belligerent of swift steam-cruisers, under no necessity, actual or conventional, to visit the possibly blockaded home ports of that belligerent, but able to obtain all requisite supplies from neutrals, will become a weapon of offense against which no preponderance of naval strength can effectually guard, and the severity of which will be felt in the ratio of the shipping and mercantile wealth of the nation against whose mercantile marine the efforts of those steam-cruisers may be directed.

That the effect of future war with any power thus enabled to purchase, prepare, and refit vessels of war in neutral ports will inevitably be to transfer to neutral flags that portion of the sea-carrying trade of the world which is now enjoyed by your memorialists and by other British ship-owners.

That over and above the chances of pecuniary loss to themselves, your memorialists share in the regret with which a law-regarding community must naturally look on successful attempts to evade the provisions of an act of Parliament passed for a single and simple purpose, but which has been found not to give the executive all the powers needed for its effective execution.

That your memorialists would accordingly respectfully urge upon your lordship the expediency of proposing to Parliament to sanction the introduction of such amendments to the foreign-enlistment act as may have the effect of giving greater power to the executive to prevent the construction in British ports of ships destined for the use of belligerents.

And your memorialists would further suggest to your lordship the importance of en-

deavoring to secure the assent of the government of the United States of America and of other foreign countries to the adoption of similar regulations in those countries also.

All which your memorialists respectfully submit.

(Signed) LAMPORT & HOLT.
JAMES BAINES & CO.
RICHARD NICHOLSON & SON.
W. B. BOADLE.
J. PROWSE & CO.
CURRIE, NEWTON & CO.
NELSON, ALEXANDER & CO.
KENDALL BROWN.
G. S. H. FLETCHER & CO.
J. AIKIN.
FINLAY, CAMPBELL & CO.
CROPPER, FERGUSON & CO.
J. CAMPBELL.
S. R. GRAVES.
RANKIN, GILMOUR & CO.
RATHBONE, BROS. & CO.

(Signed) JAMES BROWN & CO.
JAMES POOLE & CO.
W. JACOB & CO.
HENRY MOORE & CO.
IMRIE & TOMLINSON.
THOMAS CHILTON.
JONES, PALMER & CO.
FARNWORTH & JARDINE.
THOMAS & JAMES HARRISON.
L. H. MACINTIRE.
POTTER BROTHERS.
CHAS. GEO. COWIE & CO.
W. J. SEALLY.
R. GIRVIN & CO.
C. T. BOWRING & CO.

LIVERPOOL, *June* 9, 1863.

No. 2.

Mr. Hammond to Messrs. Lamport & Holt, and others.

FOREIGN OFFICE, *July* 6, 1863.

GENTLEMEN: I am directed by Earl Russell to acknowledge the receipt of the memorial dated the 9th of June, signed by you and others of the merchants at Liverpool, in which you urge upon his lordship the expediency of proposing to Parliament such amendments to the foreign-enlistment act as shall enable the government to prevent the construction in British ports of ships destined for the use of belligerents.

I am to state to you in reply, that in Lord Russell's opinion the foreign-enlistment act is effectual for all reasonable purposes, and to the full extent to which international law or comity can require, provided proof can be obtained of any act done with the intent to violate it.

Even if the provisions of the act were extended, it would still be necessary that such proof should be obtained, because no law could or should be passed to punish upon suspicion instead of upon proof.

I am &c.,
(Signed) E. HAMMOND.

APPENDIX VOL. IV.

(GENEVA EDITION.)

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NORTH AMERICA. No. 3. (1863.)

CORRESPONDENCE RESPECTING THE ALABAMA.

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[1] *CORRESPONDENCE RESPECTING THE ALABAMA.

No. 1.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, June 23, 1863. (Received June 24.)

MY LORD: Some time since it may be recollected by your lordship that I felt it my duty to make a representation touching the equipment from the port of Liverpool of the gun-boat the Oreto with the intent to make war upon the United States. Notwithstanding the statements returned from the authorities of that place, with which your lordship favored me in reply, touching a different destination of that vessel, I have the strongest reason for believing that that vessel went directly to Nassau, and that she has been there engaged in completing her armament, provisioning, and crew for the object first indicated by me.

I am now under the painful necessity of apprising your lordship, that a new and still more powerful war-steamer is nearly ready for departure from the port of Liverpool on the same errand. This vessel has been built and launched from the dock-yard of persons one of whom is now sitting as a member of the House of Commons, and is fitting out for the especial and manifest object of carrying on hostilities by sea. It is about to be commanded by one of the insurgent agents, the same who sailed in the Oreto. The parties engaged in the enterprise are persons well known at Liverpool to be agents and officers of the insurgents in the United States, the nature and extent of whose labors are well explained in the copy of an intercepted letter of one of them which I received from my government some days ago, and which I had the honor to place in your lordship's hands on Thursday last.

I now ask permission to transmit, for your consideration, a letter addressed to me by the consul of the United States at Liverpool, in confirmation of the statements here submitted, and to solicit such action as may tend either to stop the projected expedition, or to establish the fact that its purpose is not inimical to the people of the United States.

Renewing, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[Inclosure in No. 1.]

Mr. Dudley to Mr. Adams.

UNITED STATES CONSULATE,
Liverpool, June 21, 1863.

SIR: The gun-boat now being built by the Messrs. Laird & Co., at Birkenhead, opposite Liverpool, and which I mentioned to you in a previous dispatch, is intended for the so-called confederate government in the Southern States. The evidence I have is entirely conclusive to my mind. I do not think there is the least room for doubt about it. Beauforth and Caddy, two of the officers from the privateer Sumter, stated that this vessel was being built for the Confederate States. The foreman in Messrs. Laird's yard says she is the sister to the gun-boat Oreto, and has been built for the

same parties and for the same purpose; when pressed for a further explanation, he stated that she was to be a privateer for the "southern government of the United States." The captain and officers of the steamer Julie Usher now at Liverpool, and which is loaded to run the blockade, state that this gun-boat is for the confederates, and is to be commanded by Captain Bullock.

The strictest watch is kept over this vessel: no person except those immedi-
[2] ately engaged upon her is admitted into the yard. On the occasion of the trial trip made last Thursday week no one was admitted without a pass, and these passes were issued to but few persons, and those who are known here as active secessionists engaged in sending aid and relief to the rebels.

I understand that her armament is to consist of eleven guns, and that she is to enter at once, as soon as she leaves this port, upon her business as a privateer.

The vessel is very nearly completed; she has had her first trial trip. This trial was successful, and entirely satisfactory to the persons who are superintending her construction. She will be finished in nine or ten days. A part of her powder-canisters, which are to number 200, and which are of a new patent, made of copper with screw tops, are on board the vessel: the others are to be delivered in a few days. No pains or expense have been spared in her construction. Her engines are on the oscillating principle, and are 350 horse-power. She measures 1,050 tons burden, and will draw fourteen feet of water when loaded. Her screw or fan works in a solid brass frame casting, weighing near two tons, and is so constructed as to be lifted from the water by steam-power. The platforms and gun carriages are now being constructed.

When completed and armed she will be a most formidable and dangerous craft, and if not prevented from going to sea will do much mischief to our commerce. The persons engaged in her construction say that no better vessel of her class was ever built.

I have, &c.,
(Signed) THOMAS H. DUDLEY.

No. 2.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *June* 25, 1862.

SIR: I have the honor to acknowledge the receipt of your letter of the 23d instant, calling attention to a steam-vessel which you state is now fitting out at Liverpool, with the intention of carrying on hostilities against the Government of the United States; and I have to acquaint you that I have lost no time in referring the matter to the proper department of Her Majesty's government.

I am, &c.,
(Signed) RUSSELL.

No. 3.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *July* 4, 1862.

SIR: With reference to my letter of the 25th ultimo, I have the honor to inclose a copy of a report from the commissioners of customs, respecting the vessel which you have been informed is being built at Liverpool for the government of the so-styled Confederate States, and in accordance therewith I would beg leave to suggest that you should instruct the United States consul at Liverpool to submit to the collector of customs at that port such evidence as he may possess tending to show that his suspicions as to the destination of the vessel in question are well founded.

I am, &c.,
(Signed) RUSSELL.

[Inclosure in No. 3.]

The commissioners of customs to the lords commissioners of the treasury.

CUSTOM-HOUSE, *July* 1, 1862.

Your lordships having referred to us the annexed letter from Mr. Hammond, under-secretary of state for foreign affairs, transmitting, by desire of Earl Russell, copy of a letter from the United States minister at this court, calling attention to a steamer reported to be fitting out at Liverpool as a Southern privateer, and inclosing copy of a letter from the United States consul at that port, reporting the result of his investigation into the matter, and requesting that immediate inquiries may be made respecting this vessel, and such steps taken in the matter as may be right and proper:

[3] *We report—

That immediately on receipt of your lordship's reference we forwarded the papers to our collector at Liverpool for his special inquiry and report, and we learn from his reply that the fitting out of the vessel has not escaped the notice of the officers of this revenue, but that as yet nothing has transpired concerning her which has appeared to demand a special report.

We are informed that the officers have at all times free access to the building-yards of the Messrs. Laird at Birkenhead, where the vessel is lying, and that there has been no attempt on the part of her builders to disguise, what is most apparent, that she is intended for a ship of war; and one of the surveyors in the service of this revenue, who had been directed by the collector personally to inspect the vessel, has stated that the description of her in the communication of the United States consul is correct, with the exception that her engines are not constructed on the oscillating principle.

Her dimensions are as follows: Length, 211 feet 6 inches; breadth, 31 feet 8 inches; depth, 17 feet 8 inches; and her gross tonnage by the present rule of measurement is 682.31 tons.

The surveyor has further stated that she has several powder-canisters on board, but as yet neither guns nor carriages, and that the current report in regard to the vessel is that she has been built for a foreign government, which is not denied by the Messrs. Laird, with whom the surveyor has conferred; but they do not appear disposed to reply to any questions respecting the destination of the vessel after she leaves Liverpool, and the officers have no other reliable source of information on that point. And having referred the matter to our solicitor, he has reported his opinion that at present there is not sufficient ground to warrant the detention of the vessel, or any interference on the part of this department, in which report we beg to express our concurrence.

And with reference to the statement of the United States consul, that the evidence he has in regard to this vessel being intended for the so-called Confederate Government in the Southern States is entirely conclusive to his mind, we would observe that, inasmuch as the officers of customs at Liverpool would not be justified in taking any steps against the vessel unless sufficient evidence to warrant her detention should be laid before them, the proper course would be for the consul to submit such evidence as he possesses to the collector at that port, who would thereupon take such measures as the provisions of the foreign-enlistment act would require. Without the production of full and sufficient evidence to justify their proceedings, the seizing-officers might entail on themselves and on the government very serious consequences.

We beg to add that the officers at Liverpool will keep a strict watch on the vessel, and that any further information that may be obtained concerning her will be forthwith reported.

(Signed) THOS. F. FREMANTLE.
GRENVILLE C. L. BERKELEY.

No. 4.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, July 7, 1862. (Received July 8.)

MY LORD: I have the honor to acknowledge the receipt of your note of the 4th instant, covering a copy of the report from the commissioners of customs respecting a vessel presumed by me to be in course of preparation at Liverpool to carry on hostile operations against the United States.

In accordance with your lordship's suggestion, I shall at once instruct the consul of the United States to submit to the collector of customs at that port such evidence as he possesses to show that the suspicions he entertains of the character of that vessel are well founded.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

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[4] *No. 5.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, July 22, 1862. (Received July 22.)

MY LORD: I have the honor to transmit copies of six depositions taken at Liverpool, tending to establish the character and destination of the vessel to which I called your lordship's attention in my note of the 23d of June last.

The originals of these papers have already been submitted to the collector of the customs at that port, in accordance with the suggestions made in your lordship's note to me of the 4th of July, as the basis of an application to him to act under the powers conferred by the enlistment act. But I feel it to be my duty further to communicate the facts as there alleged to Her Majesty's government, and to request that such further proceedings may be had as may carry into full effect the determination which I doubt not it ever entertains to prevent, by all lawful means, the fitting out of hostile expeditions against the government of a country with which it is at peace.

I avail, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[Inclosure in No. 5.]

Depositions.

I, Thomas H. Dudley, of No. 3 Wellesley Terrace, Prince's Park, in the borough of Liverpool, in the county of Lancaster, esquire, make oath and say as follows:

1. I am the consul of the United States of North America for the port of Liverpool and its dependencies.

2. In the month of July, in the year one thousand eight hundred and sixty-one, information was sent by the United States Government to the United States consulate at Liverpool, that a Mr. J. D. Bullock, of Savannah, in the State of Georgia, who was formerly the master of an American steamer called the Cahawba, was reported to have left the United States for England, taking with him a credit for a large sum of money to be employed in fitting out privateers; and also several commissions issued by the Southern Confederate States for such privateers; and in the month of August, one thousand eight hundred and sixty-one, information was sent by the United States Government to the United States consulate at Liverpool, that the said Captain Bullock was then residing near Liverpool, and acting as the agent of the said Confederate States in Liverpool and London.

3. In accordance with instructions received from the Government of the United States, steps have been taken to obtain information as to the proceedings and movements of the said J. D. Bullock, and I have ascertained the following circumstances, all of which I verily believe to be true, namely: That the said J. D. Bullock is in constant communication with parties in Liverpool who are known to be connected with, and acting for, the parties who have assumed the government of the Confederate States; that the said J. D. Bullock, after remaining for some time in England, left the country,

and, after an absence of several weeks, returned to Liverpool in the month of March last from Charleston, in the State of South Carolina, one of the seceded States, in a screw-steamer then called the Annie Childs, which had broken the blockade of the port of Charleston, then and now maintained by the United States Navy, and which vessel, the Annie Childs, carried the flag of the Confederate States as she came up the Mersey; that shortly after the arrival of the said J. D. Bullock at Liverpool in the Annie Childs, as above mentioned, he again sailed from Liverpool in a new gun-boat called the Oreto, built at Liverpool by Messrs. W. C. Miller & Sons, shipbuilders, and completed in the early part of the present year, and which gun-boat, the Oreto, though she cleared from Liverpool for ———, in reality never went to ———, but proceeded to Nassau, New Providence, to take on board guns and arms, with a view to her being used as a privateer or vessel of war under a commission from the so-called Confederate Government against the Government of the United States, and which said vessel, the Oreto, is stated to have been lately seized at Nassau by the commander of Her Majesty's ship Greyhound; that the said J. D. Bullock has since returned again to Liverpool, and that before he left Liverpool, and since he returned, he has taken an active part in superintending the building, equipment, and fitting out of another steam gun-boat,

[5] known as *No. 290, which has lately been launched by Messrs. Laird & Co., of Birkenhead, and which is now lying, as I am informed and believe, ready for sea in the Birkenhead docks with a large quantity of provisions and stores and thirty men on board; that the said J. D. Bullock is going out in the said gun-boat No. 290, which is nominally commanded by one Matthew J. Butcher, who, I am informed, is well acquainted with the navigation of the American coast, having formerly been engaged in the coasting trade between New York, Charleston, and Nassau.

4. From the circumstances which have come to my knowledge, I verily believe that the said gun-boat No. 290 is being equipped and fitted out as a privateer or vessel of war, to serve under a commission to be issued by the government of the so-called Confederate States, and that the said vessel will be employed in the service of the said Confederate States to cruise and commit hostilities against the Government and people of the United States of North America.

(Signed) T. H. DUDLEY.

Sworn before me, at the custom-house, Liverpool, the 21st July, 1862.
(Signed) J. PRICE EDWARDS,
Collector.

I, Matthew Maguire, of Liverpool, agent, make oath and say as follows:

1. I know Captain J. D. Bullock, who is commonly reputed to be the agent of the Confederate States of America at Liverpool.

2. I have seen the said J. D. Bullock several times at the yard of Messrs. Laird & Co., at Birkenhead, where a gun-boat known as No. 290 has lately been built, while the building of the said vessel has been going on.

3. On the 2d day of July now instant, I saw the said J. D. Bullock on board the said vessel at Messrs. Laird & Co.'s yard. He appeared to be giving orders to the workmen who were employed about such vessel.

(Signed) MATTHEW MAGUIRE.

Sworn before me, at the custom-house, Liverpool, the 21st July, 1862.
(Signed) J. PRICE EDWARDS,
Collector.

I, Allan Stanley Clare, of Liverpool, in the county of Lancaster, articled clerk, make oath and say as follows:

On the 21st of July now instant, I examined the book at the Birkenhead dockmaster's office at Birkenhead, containing a list of all vessels which enter the Birkenhead docks, and I found in such book an entry of a vessel described as No. 290, and from the entries in said book in reference to such vessel, it appears that she is a screw-steamer, and that her registered tonnage is 500 tons, and that Matthew J. Butcher is her master.

(Signed) A. S. CLARE.

Sworn before me, at the custom-house, Liverpool, the 21st July, 1862.
(Signed) J. PRICE EDWARDS,
Collector.

I, John de Costa, of No. 8 Waterloo road, Liverpool, shipping-master, make oath and say as follows:

1. I know and have for several months known by sight Captain Bullock, who is

very generally known in Liverpool as an agent or commissioner of the Confederate States in America.

2. In the month of March last I saw the screw-steamer Annie Childs, which had run the blockade from Charleston, enter the river Mersey. She came up the Mersey with the confederate flag flying at her peak: and I saw the Oreto, a new gun-boat which had been recently built by Messrs. W. C. Miller & Sons, and which was then lying at anchor in the river, off Egremont, dip her colors three times in acknowledgment of the Annie Childs, which vessel returned the compliment, and a boat was immediately afterward dispatched from the Annie Childs to the Oreto, with several persons on board besides the men who were at the oars.

3. On the 22d day of March last I was on the North Landing stage between 7 and 8 o'clock in the morning. I saw the said Captain Bullock go on board a tender which afterward took him off to the said gun-boat Oreto, which was then lying in the Sloyne. Just before he got on board the tender he shook hands with a gentleman who was with him, and said to him, "This day six weeks you will get a letter from me from Charleston," or words to that effect.

[6] 4. On the same day, between 11 and 12 o'clock, as well as I can remember, I saw the Oreto go to sea. She came well in on the Liverpool side of the river, and from the Prince's pier-head, where I was standing, I distinctly saw the said Captain Bullock on board her, with a person who had been previously pointed out to me, by a fireman who came to Liverpool in the Annie Childs, as a Charleston pilot who had come over in the Annie Childs, with Captain Bullock, to take the gun-boat out.

(Signed) JOHN DE COSTA.

Sworn before me, at the custom-house, Liverpool, the 21st July, 1862.

(Signed) J. PRICE EDWARDS.
Collector.

We, Henry Wilding, of Liverpool, in the county of Lancaster, gentleman, and Matthew Maguire, of Liverpool aforesaid, agent, make oath and say as follows:

1. I, the said Matthew Maguire, for myself say that, on the 15th day of July now instant, I took ——— Brogan, who I know to be an apprentice working in the shipbuilding yard of Messrs. Laird & Co., at Birkenhead, to the above-named deponent, Henry Wilding, at his residence at New Brighton.

2. And I, the said Henry Wilding, for myself say as follows: I am the vice-consul of the United States of North America at Liverpool.

3. On the 15th day of July now instant, I saw the said ——— Brogan, and examined him in reference to a gun-boat which I had heard was being built by the said Messrs. Laird & Co. for the so-called confederate government, and the said ——— Brogan then informed me that the said vessel was built to carry four guns on each side, and four swivel guns; that Captain Bullock had at one time, when the vessel was in progress, come to the yard almost every day to select the timber to be used for the vessel. That the said Captain Bullock was to be the captain of the said vessel, and that the said Captain Bullock had asked the said ——— Brogan to go as carpenter's mate in the said vessel for three years, which the said ——— Brogan had declined to do, because Mr. Laird, who was present at the time, would not guarantee his wages. That the said vessel was to carry 120 men, and that 30 able seamen were already engaged for her. That the petty officers for the said vessel were to be engaged for three years, and the seamen for five months. That the said vessel was then at the end of the new warehouses in the Birkenhead docks, and that it was understood she was to take her guns on board at Messrs. Laird & Co.'s shed further up the dock; and that it was generally understood by the men in Messrs. Laird & Co.'s yard that the said vessel was being built for the confederate government.

4. The vessel above mentioned is the same which is now known as No. 290, and I verily believe that the said vessel is in fact intended to be used as a privateer, or vessel of war, under a commission from the so-called confederate government, against the United States Government.

(Signed) HENRY WILDING.
MATTHEW MAGUIRE.

Sworn before me, at the custom-house, Liverpool, the 21st July, 1862.

(Signed) J. PRICE EDWARDS.
Collector.

I, William Passmore, of Birkenhead, in the county of Chester, mariner, make oath and say as follows:

1. I am a seaman, and have served as such on board Her Majesty's ship Terrible, during the Crimean war.

2. Having been informed that hands were wanted for a fighting-vessel built by Messrs. Laird & Co., of Birkenhead, I applied on Saturday, which was, I believe, the 21st day of June last, to Captain Butcher, who, I was informed, was engaging men for the said vessel, for a berth on board her.

3. Captain Butcher asked me if I knew where the vessel was going. In reply to which I told him I did not rightly understand about it. He then told me the vessel was going out to the government of the Confederate States of America. I asked him if there would be any fighting; to which he replied, yes; they were going to fight for the southern government. I told him I had been used to fighting-vessels, and showed him my papers. I asked him to make me signal-man on board the vessel, and, in reply, he said that no articles would be signed until the vessel got outside, but he would make me signal-man if they required one when they got outside.

4. The said Captain Butcher then engaged me as an able seaman on board the said vessel, at the wages of £4 10s. per month; and it was arranged that I should join the ship in Messrs. Laird & Co.'s yard on the following Monday. To enable me to get on board, Captain Butcher gave me as a pass-word the number "290."

[7] *5. On the following Monday, which was I believe the 23d day of June last, I joined the said vessel in Messrs. Laird & Co.'s yard at Birkenhead, and remained by her until Saturday last.

6. The said vessel is a screw-steamer of about 1,100 tons burden, as far as I can judge, and is built and fitted up as a fighting-ship in all respects. She has a magazine and shot and canister racks on deck, and is pierced for guns, the sockets for the bolts for which are laid down. The said vessel has a large quantity of stores and provisions on board, and she is now lying at the Victoria Wharf, in the Great Float at Birkenhead, where she has taken in about 300 tons of coal.

7. There are now about thirty hands on board her, who have been engaged to go out in her. Most of them are men who have previously served on board fighting-ships, and one of them is a man who served on board the confederate steamer Hunter. It is well known by the hands on board that the vessel is going out as a privateer for the confederate government, to act against the United States, under a commission from Mr. Jefferson Davis. Three of the crew on board are, I believe, engineers, and there are also some firemen on board.

8. Captain Butcher and another gentleman have been on board the ship almost every day. It is reported on board the ship that Captain Butcher is to be the sailing-master, and that the other gentleman, whose name I believe is Bullock, is to be the fighting captain.

9. To the best of my information and belief, the above-mentioned vessel, which I have heard is to be called the Florida, is being equipped and fitted out in order that she may be employed in the service of the confederate government in America, to cruise and commit hostilities against the Government and people of the United States of America.

(Signed) WILLIAM PASSMORE.

Sworn before me, at the custom-house, Liverpool, this 21st day of July, 1862.

(Signed) J. PRICE EDWARDS,
Collector.

No. 6.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, July 24, 1862. (Received July 26.)

MY LORD: In order that I may complete the evidence in the case of the vessel now fitting out at Liverpool, I have the honor to submit to your lordship's consideration the copies of two more depositions taken respecting that subject.

In the view which I have taken of this extraordinary proceeding as a violation of the enlistment act, I am happy to find myself sustained by the opinion of an eminent lawyer of Great Britain, a copy of which I do myself the honor likewise to transmit.

Renewing, &c.,

(Signed) CHARLES FRANCIS ADAMS.

[Inclosure 1 in No. 6.]

Depositions.

I, Edward Roberts, of No. 6 Vere street, Foxteth Park, in the county of Lancaster, ship-carpenter, make oath and say as follows:

1. I am a ship-carpenter, and have been at sea for about four years in that capacity.

2. About the beginning of June last I had been out of employ for about two months, and hearing that there was a vessel in Messrs. Laird & Co.'s yard fitting out to run the blockade, I applied to Mr. Barnett, shipping-master, to get me shipped on board the said vessel.

3. On Thursday, the 19th day of June last, I went to the said Mr. Barnett's office, No. 11 Hanover street, Liverpool, in the county of Lancaster, and was engaged for the said vessel as carpenter's mate. By the direction of the said Mr. Barnett I met Captain Butcher the same day on the George's landing-stage, and followed him to Messrs. Laird & Co.'s ship-building yard, and on board a vessel lying there. The said Captain Butcher spoke to the boatswain about me, and I received my orders from the said boatswain. At dinner-time the same day, as I left the yard, the gateman asked me if I was "going to work on that gun-boat:" to which I replied, "Yes."

[8] 4. The said vessel is now lying in the Birkenhead float, and is known by the name "No. 290. The said vessel has coal and stores on board. The said vessel is pierced for guns, I think four on a side, and a swivel-gun. The said vessel is fitted with shot and canister racks, and has a magazine. There are about fifty men, all told, now on board the said vessel. It is generally understood on board of the said vessel that she is going to Nassau for the southern government.

5. I know Captain Bullock by sight, and have seen him on board of the said vessel five or six times; I have seen him go round the vessel with Captain Butcher. I understood, both at Messrs. Laird & Co.'s yard and also on board the said vessel, that the said Captain Bullock was the owner of the said vessel.

6. I have been working on board the said vessel from the 19th day of June last up to the present time, with wages at the rate of £6 per month, payable weekly. I have signed no articles or agreement. The talk on board is that an agreement will be signed before sailing.

(Signed) EDWARD ROBERTS.

Sworn at Liverpool, in the county of Lancaster, this 22d day of July, 1862, before me.

(Signed) WM. BROWN,
Justice of the Peace for Lancashire and Liverpool.

I, Robert John Taylor, of Mobile, but at present remaining temporarily at Liverpool, mariner, make oath and say as follows:

1. I am a native of London, and forty-one years of age. From fourteen years upward I have followed the sea. During the last fifteen years I have been living in the Confederate States of America, principally at Savannah and Mobile, and since the secession movement I have been engaged in running the blockade. I have run the blockade six times and been captured once.

2. The vessels in which I have been engaged in running the blockade have sailed from Mobile, and have gone to Havana and New Orleans. I am well acquainted with the whole of the coasts of the Confederate States, as I have been principally engaged since 1847 in trading to and from the Gulf ports.

3. I came to England after my release from Fort Warren on the 29th of May last. I came here with the intention of going to the Southern States, as I could not get there from Boston.

4. Mr. Rickarby, of Liverpool, a brother of the owner, at Mobile, of the vessel in which I was captured when attempting to run the blockade, gave me instructions to go to Captain Butcher at Laird's yard, Birkenhead. I had previously called on Mr. Rickarby, and told him that I wanted to go South, as the Northerners had robbed me of my clothes when I was captured, and I wanted to have satisfaction.

5. I first saw Captain Butcher at one of Mr. Laird's offices last Thursday fortnight, (namely, the 3d of July last.) I told him that I had been sent by Mr. Rickarby, and asked him if he were the captain of the vessel which was lying in the dock. I told him that I was one of the men that had been captured in one of Mr. Rickarby's vessels, and that I wanted to get South in order to have retaliation of the Northerners for robbing me of my clothes. He said that if I went with him in his vessel I should very shortly have that opportunity.

6. Captain Butcher asked me at the interview if I was well acquainted with the

Gulf ports, and I told him I was. I asked him what port he was going to, and he replied that he could not tell me then, but that there would be an agreement made before we left for sea. I inquired as to the rate of wages, and I was to get £4 10*s.* per month, payable weekly.

7. I then inquired if I might consider myself engaged, and he replied, yes, and that I might go on board the next day, which I accordingly did; and I have been working on board up to last Saturday night.

8. I was at the siege of Acre in 1840, in Her Majesty's frigate Pique, Captain Edward Boxer, and served on board for nine months. Captain Butcher's ship is pierced for eight broadside-guns and four swivels or long-toms. Her magazine is complete, and she is fitted up in all respects as a man-of-war, without her ammunition. She is now chock-full of coals, and has, in addition to those in the hold, some thirty tons on deck.

9. One day, while engaged in heaving up some of the machinery, we were singing a song, as seamen generally do, when the boatswain told us to stop that, as the ship was not a merchant-ship, but a man-of-war.

(Signed) ROBERT JOHN TAYLOR.

Sworn at Liverpool, in the county of Lancaster, this 22d day of July, 1862, before me.

(Signed) W. J. LAMPORT,
Justice of the Peace for Liverpool.

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[9] *[Inclosure 2 in No. 6.]

Case submitted to Mr. Collier, Q. C.

You will receive herewith copies of the following affidavits in reference to a gun-boat known as No. 290, which was built by Messrs. Laird & Co. at Birkenhead, as it is believed for the Confederate States of America, and which is now lying ready for sea in all respects in the Birkenhead docks: No. 1. Affirmation of T. H. Dudley; No. 2. Affidavit of J. de Costa; No. 3. Affidavit of Mr. Maguire; No. 4. Affidavit of H. Wilding and M. Maguire; No. 5. Affidavit of A. S. Clare; No. 6. Affidavit of William Passmore; No. 7. Affidavit of Edward Roberts; No. 8. Affidavit of Robert John Taylor. An application has been made on the affidavits Nos. 1 to 6 inclusive, to the collector of customs at Liverpool, to detain the vessel under the provisions of the act 59 Geo. III, cap. 69; but under the advice to the solicitors of the customs, the board have declined to sanction the detention of the vessel.

You are requested to advise the consul for the United States, at Liverpool, whether the affidavits now submitted to you disclose facts which would justify the collector of customs in detaining the vessel under the act in question.

JULY 23, 1862.

OPINION.

I have perused the above affidavits, and I am of the opinion that the collector of customs would be justified in detaining the vessel. Indeed, I should think it his duty to detain her; and that if, after the application which has been made to him, supported by the evidence which has been laid before me, he allows the vessel to leave Liverpool, he will incur a heavy responsibility, a responsibility of which the board of customs, under whose directions he appears to be acting, must take their share.

It appears difficult to make out a stronger case of infringement of the foreign-enlistment act, which, if not enforced on this occasion, is little better than a dead letter.

It well deserves consideration whether, if the vessel be allowed to escape, the Federal Government would not have serious grounds of remonstrance.

TEMPLE, *July* 23, 1862.

(Signed) R. P. COLLIER.

No. 7.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *July* 28, 1862.

SIR: I have the honor to acknowledge the receipt of your letters of the 22d and 24th instant, relative to the vessel alleged to be fitting

out at Liverpool for the service of the so-styled Confederate States; and I am to state to you, in reply, that these papers have been referred to the law-officers of the Crown.

I am, &c.
(Signed) RUSSELL.

No. 8.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, September 4, 1862. (Received September 5.)

MY LORD: I have the honor to transmit the copy of a letter received from the consul of the United States at Liverpool, together with a deposition in addition to the others already submitted with my notes of the 22d and 24th of July, going to show the further prosecution of the illegal and hostile measures against the United States in connection with the outfit of the gun-boat No. 290 from the port of Liverpool. It now appears that supplies are in process of transmission from here to a vessel fitted out from England, and now sailing on the high seas, with the piratical intent to burn and destroy the property of the people of a country with which Her Majesty is in alliance and friendship. I pray your lordship's pardon if I call your attention to the fact that I
[10] have not yet received *any reply in writing to the several notes and representations I have had the honor to submit to Her Majesty's government touching this flagrant case.

Renewing, &c.
(Signed) CHARLES FRANCIS ADAMS.

[Inclosure 1 in No. 8.]

Mr. Dudley to Mr. Adams.

UNITED STATES CONSULATE,
Liverpool, September 3, 1862.

SIR: I have just obtained the affidavit of the boatswain's mate who shipped in and went out on the No. 290, now called the Alabama. I inclose it to you, with bill for his services, signed by Captain Butcher. He returned on the Bahama. He states that the Alabama is to cruise on the line of packets from Liverpool to New York; that Semmes told them so. This may have been said for the purpose of misleading us. The bark that took out the guns and coal is to carry out another cargo of coal to her; is to take it on either at Cardiff or Troon, near Greenock, in Scotland; the bark to meet the Alabama near the same island where the armament was put on board, or at least in that neighborhood. There will be no difficulty to get other testimony, if it is required.

I am, &c.
(Signed) THOS. H. DUDLEY.

P. S.—There were two American vessels in sight when they parted with the Alabama, which Captain Semmes said he would take. They no doubt were taken and destroyed, the first fruits from this vessel.

T. H. D.

[Inclosure 2 in No. 8.]

Deposition.

Henry Redden says: I reside in 16 Hook street, Vauxhall road, and am a seaman. In April last I shipped as boatswain's mate of a vessel lying in Laird's dock, at Birk-

enhead, known as 290, and worked on board until she sailed. We sailed from Liverpool about 28th July; Captain Butcher was master; Mr. Law, a southerner, was mate; Mr. Lawrence Young was purser. A Captain Bullock went out with us but left with the pilot at Giant's Cove, near Londonderry. There were five ladies and a number of gentlemen went with us as far as the Bell Buoy. We went first to Malfre Bay, near Point Lynas, when we anchored and remained about thirty-hours. The Hercules tug brought down about forty men to us there; nothing else was then taken on board. Her crew then numbered ninety men, of whom thirty six were sailors. She had no guns on board then, nor powder, nor ammunition. We left Malfre Bay on the Thursday night at 12 o'clock, and steered for the North Channel. We discharged Captain Bullock and the pilot on Saturday afternoon. We first steered down the South Channel as far as Bardsea, when we 'bout ship and steered north. From Derry we cruised about until we arrived at Angra, eleven days after leaving Holyhead. About four days after we arrived an English bark, ———, Captain Quinn, arrived from London with six guns, two of them 98-pounders (one rifled and the other smooth-bore) pivot-guns, and four 38-pounder breech-guns, smooth-bore broadside guns, 200 or 300 barrels of powder, several cases of shot, a quantity of slops, 200 tons of coal. She came alongside and made fast. We were anchored in Angra Bay, about a mile and a half or two miles from shore. After being there about a week, and while we were taking the guns and ammunition on board, the authorities ordered us away. We went outside and returned at night. The bark was kept lashed alongside and we took the remainder of the guns, &c., on board as we could. While we were discharging the bark the steamer Bahama, Captain Tessier, arrived from Liverpool. Captain Bullock, Captain Semmes, and forty men came in her. She also brought two 38-pounder guns, smooth-bore, and two safes full of money in gold. She had a safe on board before, taken on board at Birkenhead. The Bahama was flying the British flag. The Bahama towed the bark to another place in the island and we followed. The next morning we were or-
[11] dered away from there, and went out to sea until *night, when we returned to Angra Bay. The Bahama, after towing the bark away the evening of her arrival, came back to the Alabama, or 290, in Angra Bay, made fast alongside of her, and discharged the guns on board of her and the money.

The men struck for wages, and would not then go on board. There were four engineers, a boatswain, and captain's clerk named Smith, also came in the Bahama, and they were taken on board the same evening. All three vessels continued to fly the British flag the whole time. The guns were mounted as soon as they were taken on board. They were busy at work getting them and the Alabama, or 290, ready for fighting while the Bahama and the bark were alongside. On the Sunday afternoon following (last Sunday week) Captain Semmes called all hands aft, and the confederate flag was hoisted, the band playing "Dixie's Land." Captain Semmes addressed the men, and said he was deranged in his mind to see his country going to ruin, and had to steal out of Liverpool like a thief. That instead of them watching him he was now going after them. He wanted all of us to join him; that he was going to sink, burn, and destroy all his enemy's property, and that any that went with him was entitled to two-twentieths prize-money; it did not matter whether the prize was sunk or burned, or sold, the prize-money was to be paid. That there were only four or five Northern ships that he was afraid of. He said he did not want any to go that was not willing to fight, and there was a steamer alongside to take them back if they were not willing,

The vessel was all this time steaming to sea, with the Bahama at a short distance. Forty-eight men, most of them firemen, refused to go, and an hour afterward were put on board the Bahama. I refused to go, and came back with the rest in the Bahama. Captain Butcher, Captain Bullock, and all the English engineers came with us and landed here on Monday morning. When we left the Alabama she was all ready for fighting, and steering to sea. I heard Captain Semmes say he was going to cruise in the track of the ships going from New York to Liverpool, and Liverpool to New York. The Alabama never steamed while I was in her more than eleven knots, and cannot make any more. We signed articles while in Malfre Bay, for Nassau or an intermediate port. Captain Butcher got us to sign. The provisions were put on board at Laird's yard before sailing; they were for six months. When we left her she had about ninety men, and eight guns mounted, three on each side and two pivots.

(Signed) HENRY REDDEN.

Declared and subscribed at Liverpool aforesaid, the 3d day of September, 1862, before me.

(Signed) WILLIAM A. BATESON,

Notary Public, and a Commissioner to administer Oaths in Chancery.

[Inclosure 2 in No. 8.]

Account.

August 31.—Henry Redden, at £6 per month.

One month and five days, at 4s	£7 0 0
Advance, £6; tobacco, 1s. 8*d*	6 1 8
Amount due	18 4

(Signed) MATTHEW JAMES BUTCHER,
Master of Steamship 290.

No. 9.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *September* 22, 1862.

SIR: I have the honor to acknowledge the receipt of your letter of the 4th instant inclosing a copy of a letter from the United States consul at Liverpool, together with the deposition of Henry Redden respecting the supply of cannon and munitions of war to the gun-boat No. 290. You also call attention to the fact that you have not yet received any reply to the representations you have addressed to Her Majesty's government upon the subject.

I had the honor in acknowledging the receipt of your letter of the 23d of June to state to you that the matter had been referred to the
[12] proper department of Her Majesty's * government for investigation. Your subsequent letters were also at once forwarded to that department, but, as you were informed in my letter of the 28th of July, it was requisite, before any active steps could be taken in the matter, to consult the law-officers of the Crown. This could not be done until sufficient evidence had been collected, and from the nature of the case some time was necessarily spent in procuring it. The report of the law-officers was not received until the 29th of July, and on the same day a telegraphic message was forwarded to Her Majesty's government, stating that the vessel had sailed that morning. Instructions were then dispatched to Ireland to detain the vessel should she put into Queenstown, and similar instructions have been sent to the governor of the Bahamas in case of her visiting Nassau. It appears, however, that the vessel did not go to Queenstown as had been expected, and nothing has been since heard of her movements.

The officers of customs will now be directed to report upon the further evidence forwarded by you, and I shall not fail to inform you of the result of the inquiry.

I am, &c.,
(Signed) RUSSELL.

No. 10.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, *September* 30, 1862. (Received October 1.)

MY LORD: I have the honor to submit to your consideration the copy of another deposition, taken at Liverpool before the collector of the port, which, in connection with the papers heretofore presented, go to

establish beyond reasonable doubt the fact that the insurgents in the United States and their coadjutors at that place have been engaged in fitting out vessels at that port to make war on the United States, in utter contempt of the law and of Her Majesty's injunctions in her proclamation. I expect to be in possession of some stronger evidence of the same nature in relation to past transactions, which I hope to be able likewise to submit in a few days.

The injuries to which the people of the United States are subjected by the unfortunate delays experienced in the case of my remonstrance against the fitting out of the gun-boat 290, now called the confederate steamer Alabama, are just beginning to be reported. I last night received intelligence from Gibraltar that this vessel has destroyed ten whaling-ships in the course of a short time at the Azores.

I have strong reason to believe that still other enterprises of the same kind are in progress in the ports of Great Britain at this time; indeed, they have attained so much notoriety as to be openly announced in the newspapers of Liverpool and London. In view of the very strong legal opinion which I had the honor to present to your lordship's consideration, it is impossible that all these things should not excite great attention in the United States. I very much fear they will impress the people and the Government with a belief, however unfounded, that their just claims on the neutrality of Great Britain have not been sufficiently estimated. The extent to which Her Majesty's flag, and some of her ports, have been used to the end of carrying on hostile operations, is so universally understood that I deem it unnecessary further to dwell upon it. But in the spirit of friendliness with which I have ever been animated toward Her Majesty's government, I feel it my duty to omit no opportunity of urging the manifestation of its well-known energy in upholding those laws of neutrality upon which alone the reciprocal confidence of nations can find a permanent base.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[Inclosure in No. 10.]

Deposition.

George King, of 91 Clarence street, Edge Hill, Liverpool, states that about the 12th August last he was engaged by Mr. Barnett, of Liverpool, to go on a secret expedition at £4 10*s.* a month. Was not told where he was going to, but understood he was going to the screw-steamer 290 to run the blockade. Was ordered to be at the landing-stage at 12 the next night, to go in a steamer. Asked where they were going to, and was told they were going to have some fun; that was all he was told. Went to the stage on
[13] *the next night as ordered, and about midnight went off in a tug-boat to screw steamer Bahama, lying off the Rock. Sailed about 6 the next morning. When we got to Terceira we found the 290 there with a bark alongside. Don't know the bark's name, but saw "Bristol" on her stern. As soon as we got there Captain Semmes told us the 290 was a confederate gun-boat, and was going on a three years' cruise; that every vessel she took or destroyed would be valued, and one-half go to the confederate government and the other half to the crew of the gun-boat. Only about fifteen or sixteen signed then. Captain Bullock was present when this was done. This was on board the Bahama. Subsequently other men signed. I and about eight others refused to go when we found what the 290 was going for. The first night, in the dark, the three cases were discharged from the Bahama into the gun-boat. She had no guns fitted then. The Bristol bark was lashed alongside, and I saw them take guns, shot, and shell out of her into the gun-boat. Saw one of the boxes taken out of the Bahama opened, and it contained the machinery for the swivel-guns. I saw the machinery fitted for the swivel-guns on the gun-boat. I saw the guns taken from the bark fitted on the gun-boat. I did not see the other boxes from the Bahama opened,

but know they contained guns, and saw them fitted on board the 290. Saw Captain Bullock superintending the fitting and arming of the gun-boat 290. Captain Butcher was also there, and managed the vessel while she was being armed. She kept sailing about during the day with the bark alongside, and at night anchored in some of the bays. They worked day and most of the night. The three vessels flew the British flag all the time the 290 was arming, and until the Sunday we left her outside Terceira Bay. About 1 o'clock on that day, I think about 24th of August, the 290 fired a gun, hauled down the British flag, and hoisted the confederate flag at the peak, the Saint George's Cross at the fore, and a pennant at the main. She was then just outside the bay, steering to sea. Captain Bullock and Captain Butcher were still on board of her. We kept company with her until about 12 that night, when Captains Bullock and Butcher left her and came on board the Bahama, and came back with us to Liverpool. When I was engaged by Mr. Barnett he gave me a note payable six days after the Bahama sailed, at an office in Water street. My brother received the money for the note. I never signed any articles or agreement of any kind.

(Signed) GEORGE KING.

Signed and declared before me, at the custom-house, Liverpool, this 27th day of September, 1862.

(Signed) J. PRICE EDWARDS, *Collector.*

No. 11.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *October* 4, 1862.

SIR: I have the honor to acknowledge the receipt of your letter of the 30th ultimo, inclosing a copy of another deposition taken before the collector of the port of Liverpool, with reference to the proceedings of the gun-boat 290, and further expressing a belief that enterprises of a similar kind are in course of progress in the ports of the United Kingdom; and I have to state to you that, much as Her Majesty's Government desire to prevent such occurrences, they are unable to go beyond the law, municipal and international.

I am, &c.,

(Signed) RUSSELL.

No. 12.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *October* 9, 1862.

SIR: With reference to my letter to you of the 22d ultimo, I honor to inclose a copy of a letter which I have received from the board of treasury forwarding a copy of a report from Her Majesty's commissioners of customs relative to the supply of cannon and munitions of war to the gun-boat No. 290.

I am, &c.,

(Signed) RUSSELL.

[Inclosure in No. 12.]

The commissioners of customs to the lords commissioners of the treasury.

CUSTOM-HOUSE, *September* 25, 1862.

Your lordships having, by Mr. Arbuthnot's letter of the 16th instant, transmitted to us, with reference to Mr. Hamilton's letter of the 2d ultimo, the inclosed communica-

tion from the foreign office, with copies of a further letter and its inclosures from the United States minister at this court respecting the supply of cannon and munitions of war to the gun-boat No. 290, recently built at Liverpool, and now in the service of the so-called Confederate States of America, and your lordships having desired that we would take such steps as might seem to be required in view of the facts therein represented, and report the result to your lordships: We have now to report—

That assuming the statements set forth in the affidavit of Redden, (who sailed from Liverpool in the vessel,) which accompanied Mr. Adams's letter to Earl Russell, to be correct, the furnishing of arms, &c., to the gun-boat does not appear to have taken place in any part of the United Kingdom, or of Her Majesty's dominions, but in or near to Angra Bay, in the Azores, part of the Portuguese dominions. No offense, therefore, cognizable by the laws of this country appears to have been committed by the parties engaged in the transactions alluded to in the affidavit.

With respect to the allegation of Redden that the arms, &c., were shipped on board the 290 in Angra Bay, partly from a bark (name not given) which arrived there from London, commanded by a Captain Quinn, and partly from the steamer Bahama, from Liverpool, we beg to state that no vessel having a master named Quinn can be traced as having sailed from this port for foreign parts during the last six months. The Knight Errant, Captain Quine, a vessel of 1,342 tons burden, cleared for Calcutta on the 12th of April last with a general cargo, such as is usually reported to the East Indies, but so far as can be ascertained from the entries she had neither gunpowder nor cannon on board.

The Bahama steamer cleared from Liverpool on the 12th ultimo for Nassau. We find that Messrs. Fawcett, Preston & Co., engineers and iron-founders of Liverpool, shipped on board that vessel nineteen cases, containing guns, gun-carriages, shot, rammers, weighing, in all, 158 cwt. 1 qr. 27 lbs; there was no other cargo on board excepting 552 tons of coal for the use of the ship; and the above-mentioned goods having been regularly cleared for Nassau in compliance with the customs law, our officers could have no power to interfere with their shipment.

With reference to the further statement in the letter of Mr. Dudley, the consul of the United States at Liverpool, that the bark that took out the guns and coal is to carry out another cargo of coal to the gun-boat 290, either from Cardiff or Troon, near Greenock, we have only to remark that there would be great difficulty in ascertaining the intention of any parties making such a shipment, and we do not apprehend that our officers would have any power of interfering with it were the coals cleared outwards for some foreign port in compliance with the law.

(Signed) F. GOULBURN.
W. R. GREY.

No. 13.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, October 9, 1862. (Received October 11.)

MY LORD: I now have the honor to transmit to your lordship a copy of an intercepted letter which I have received from my government, being the further evidence to which I made allusion in my note to your lordship of the 30th of September, as substantiating the allegations made of the infringement of the enlistment law by the insurgents of the United States in the ports of Great Britain.

I am well aware of the fact to which your lordship calls my attention in the note of the 4th instant, the reception of which I have the honor to acknowledge, that Her Majesty's government are unable to go beyond the law, municipal and international, in preventing enterprises of the kind referred to. But in the representations which I have had the honor lately to make, I beg to remind your lordship that I base them upon evidence which applies directly to infringements of
[15] the municipal law itself, and not to *anything beyond it. The consequence of an omission to enforce its penalties is therefore necessarily that heretofore pointed out by eminent counsel, to wit,

"the law is little better than a dead letter:" a result against which "the Government of the United States has serious ground of remonstrance."

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[Inclosure in No. 13.]

Mr. Mallory to Commander North, C. S. N.

NAVY DEPARTMENT,
Richmond, July 12, 1862.

SIR: Your letter of the 29th of March last reached me this morning.

The department notified you on the 11th of January last that you would receive orders to command the second vessel then being built in England, but for reasons satisfactory to the department you were subsequently assigned to the command of the first vessel, the Florida, (Oreto,) now at Nassau, and any just ground for the "surprise and astonishment" in this respect at the department's action is not perceived.

A commission as commander for the war was sent you on the 5th of May, and your failure to follow the Oreto, which left England about the 21st of March, and to take command of her as was contemplated, and as you were apprised by Captain Bullock on the 26th of March, is not understood, and has been productive of some embarrassment.

Captain Bullock was nominated by the executive for his position in the navy under existing law, and was duly confirmed by the senate, and your protest to this department against the action of these co-ordinate branches of your government is out of place.

Upon the receipt of this letter you will turn over to Lieutenant G. F. Sinclair the instructions which you may have received, together with any public funds in your hands, and return to the Confederate States in such manner as your judgment may direct.

Should you not be provided with funds for this purpose, Commander Bullock will upon your application supply them.

I am, &c.,
(Signed) S. R. MALLORY,
Secretary of the Navy.

No. 14.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *October* 16, 1862.

SIR: I have the honor to acknowledge the receipt of your letter of the 9th instant, inclosing a copy of an intercepted letter which you had received from the United States Government, being the further evidence with regard to the gun-boat No. 290, to which you alluded in your previous communication to me of the 30th ultimo; and with reference to your observations with regard to the infringement of the enlistment law, I have to remark that it is true the foreign-enlistment act, or any other act for the same purpose, can be evaded by very subtle contrivances, but Her Majesty's government cannot on that account go beyond the letter of the existing law.

I am, &c.,
(Signed) RUSSELL.

No. 15.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, November 20, 1862. (Received November 22.)

MY LORD: It is with very great regret that I find myself once more under the necessity of calling your lordship's attention to the painful situation in which the Government of the United States is placed by the successive reports received of the depredations committed on the high seas upon merchant-vessels by the gun-boat known in this country as No. 290, touching the construction and outfit of which in the port of Liverpool, for the above purpose, I had the honor of heretofore presenting evidence of the most positive character.

[16] *It is my duty now to submit to your consideration copies of a large number of papers received from Washington, as well as from the consul at Liverpool, all of which concur in establishing the truth of the allegations made by me of the intentions of that vessel prior to her departure from the ports of this kingdom. I then averred that the purpose was to make war upon the people of the United States, a nation with which Great Britain has now been for half a century, and still is, on a footing of the most friendly alliance by the force of treaties which have received the solemn sanction of all the authorities regarded among men as necessary to guarantee the mutual obligations of nations. That I made no mistake in that averment is now fully proved by the hostile proceedings of that vessel since the day she sailed from the place in this kingdom where she was prepared for that end.

It now appears from a survey of all the evidence, first, that this vessel was built in a dock-yard belonging to a commercial house in Liverpool, of which the chief member, down to October of last year, is a member of the House of Commons; secondly, that from the manner of her construction, and her peculiar adaptation to war purposes, there could have been no doubt by those engaged in the work, and familiar with such details, that she was intended for other purposes than those of legitimate trade; and, thirdly, that during the whole process and outfit in the port of Liverpool the direction of the details, and the engagement of persons to be employed in her, were more or less in hands known to be connected with the insurgents in the United States. It further appears that since her departure from Liverpool, which she was suffered to leave without any of the customary evidence at the custom-house to designate her ownership, she has been supplied with her armament, with coals and stores, and men by vessels known to be fitted out and dispatched for the purpose from the same port; and that, although commanded by Americans in her navigation of the ocean, she is manned almost entirely by English seamen, engaged and forwarded from that port by persons in league with her commander. Furthermore, it is shown that this commander, claiming to be an officer acting under legitimate authority, yet is in the constant practice of raising the flag of Great Britain in order the better to execute his system of ravage and depredation on the high seas. And lastly, it is made clear that he pays no regard whatever to the recognized law of capture of merchant-vessels on the high seas, which requires the action of some judicial tribunal to confirm the rightfulness of the proceeding; but, on the contrary, that he resorts to the piratical system of taking, plundering, and burning private property without regard to consequences or responsibility to any legitimate authority whatever.

Such being the admitted state of the facts, the case evidently opens a series of novel questions of the gravest character to the consideration of all civilized countries. It is obviously impossible to reconcile the toleration by any one nation of similar undertakings in its own ports to the injury of another nation with which it is at peace with any known theory of moral or political obligation. It is equally clear that the reciprocation of such practices could only lead, in the end, to the utter subversion of all security to private property upon the ocean. In the case of countries geographically approximated to one another, the preservation of peace between them for any length of time would be rendered by it almost impossible. It would be, in short, permitting any or all irresponsible parties to prepare and fit out in any country just what armed enterprises against the property of their neighbors they might think fit to devise, without the possibility of recovering a control over their actions the moment after they might succeed in escaping from the particular local jurisdiction into the high seas.

It is by no means my desire to imply an intention on the part of Her Majesty's government to countenance any such idea. I am fully aware of the fact that, at a very early date, more than one month before the escape of the vessel, on my presenting evidence of the nature and purposes of the nameless vessel, together with the decided opinion of eminent counsel that a gross violation of the law of the land, as well as a breach of the law of nations, was in process of perpetration, an investigation was entered into by the law-officers of the Crown, which resulted in an acknowledgment of the justice of the remonstrance. In consequence of this I am led to infer, from the language of your lordship's note of the 22d of September, explaining the facts of the case, that an order to detain the vessel at Liverpool was about to issue on the 29th of July last, when a telegraphic message was forwarded to you from that port to the effect that the vessel had escaped that very morning. Your lordship further adds that instructions were then immediately sent to Ireland to stop her should she put into Queenstown, and similar instructions were forwarded to the port of Nassau. But it has turned out that nothing has been heard of her at either place.

It thus appears that Her Majesty's government had become so far convinced of the true nature of the enterprise in agitation at
[17] Liverpool from the evidence which I had had * the honor to submit to your lordship's consideration, and from other inquiry, as to have determined on detaining the vessel. So far as this action went, it seems to have admitted the existence of a case of violation of the laws of neutrality in one of Her Majesty's ports, of which the Government of the United States had a right to complain. The question will then remain, how far the failure of the proceedings thus admitted to have been instituted by Her Majesty's government to prevent the departure of this vessel affects the right of reclamation of the Government of the United States for the grievous damage done to the property of their citizens in permitting the escape of this lawless pirate from its jurisdiction?

And here it may not be without its use to call to your lordship's recollection for a moment the fact that this question, like almost all others connected with the duty of neutrals in time of war on the high seas, has been much agitated in the discussions heretofore held between the authorities of the two countries. During the latter part of the last century it fell to the lot of Her Majesty's government to make the strongest remonstrances against the fitting out in the ports of the United States of vessels with an intent to prey upon British commerce;

not, however, in the barbarous and illegal manner shown to have been practiced by No. 290, but subject to the forms of ultimate adjudication equally recognized by all civilized nations; and they went the further length of urging the acknowledgment of the principle of compensation in damages for the consequences of not preventing the departure of such vessels. That principle was formally recognized as valid by both parties in the seventh article of the treaty of the 19th November, 1794; and accordingly, all cases of damage previously done by capture of British vessels or merchandise, by vessels originally fitted out in the ports of the United States, were therein agreed to be referred to a commission provided for by that treaty, to award the necessary sums for full compensation.

I am well aware that the provisions of that treaty are no longer in force, and that even if they were, they bound only the United States to make good the damage done in the precise contingency then occurring. But I cannot for a moment permit myself to suppose that Her Majesty's government, by the very act of pressing for the recognition of the principle in a treaty when it applied for its own benefit, did not mean to be understood as equally ready to sustain it at any and all times when it might be justly applied to the omission to prevent similar action of British subjects within its own jurisdiction toward the people of the United States.

But I would beg further to call your lordship's attention to the circumstance that there is the strongest reason to believe that the claim for compensation in cases of this kind was not pressed by Her Majesty's government merely in connection with the obtaining a formal recognition of the principle in an express contract. This seems to have been but a later step, and one growing out of a previous advance of a similar demand based only on general principles of equity that should prevail at all times between nations. Here again it appears that the Government of the United States, having admitted a failure down to a certain date in taking efficient steps to prevent the outfit in their ports of cruisers against the vessels of Great Britain, with whom they were at peace, recognized the validity of the claim advanced by Mr. Hammond, Her Majesty's minister plenipotentiary at Philadelphia, for captures of British vessels subsequently made by those cruisers even on the high seas. This principle will be found acknowledged in its full length in the reply of Mr. Jefferson, then Secretary of State of the United States, dated 5th of September, 1793, to a letter from Mr. Hammond of the 30th of August preceding, a copy of which is unfortunately not in my possession; but which, from the tenor of the answer, I must presume to have itself distinctly presented the admitted ground of the claim.

Armed by the authority of such a precedent, having done all in my power to apprise Her Majesty's government of the illegal enterprise in ample season for effecting its prevention; and being now enabled to show the injurious consequences to innocent parties relying upon the security of their commerce from any danger through British sources, ensuing from the omission of Her Majesty's government, however little designed, to apply the proper prevention in due season, I have the honor to inform your lordship of the directions which I have received from my Government to solicit redress for the national and private injuries already thus sustained, as well as a more effective prevention of any repetition of such lawless and injurious proceedings in Her Majesty's ports hereafter.

I pray, &c.,

(Signed) CHARLES FRANCIS ADAMS.

[18] *[Inclosure 1 in No. 17.]

Mr. Osborn, jr., to Mr. Dabney.

FLORES, *September* 13, 1862.

DEAR SIR: I will inform you that the confederate steamer Alabama captured and destroyed my ship Ocmulgee, of Edgartown, with 260 barrels of sperm, two months out; also the Ocean Rover, the Alert, schooner Weather Gauge, and a schooner belonging to Captain Doane. I think that the best thing that could be done for the United States Government would be to dispatch a vessel to Gibraltar and inform the captain of the Tuscarora, as he is now watching the Sumter, as I have papers to the 20th of August stating that he was still watching the Sumter. The pirate says he will have your bark if he stops for two months, as he said that you would not give him any coal when he was at Fayal. He says he will have the whole fleet of whalers, and intends to stop here about a month, and you see, sir, that there will be plenty of time to dispatch a vessel to Gibraltar and inform the captain of the Tuscarora, and he will come down here and take him. What I have written is the wish of all the ship-masters.

Yours, &c.,
(Signed) ABM. OSBORN, JR.
D. R. ALLEN,
Master of bark Eagle, of New Bedford.
WM. SMITH,
Master of ship Black Eagle.

[Inclosure 2 in No. 17.]

Mr. Mackay, jr., to Mr. Dabney.

FLORES, *September* 16, 1862.

DEAR SIR: This moment the brig Hortense arrived from Fayal, and gives me only time to write a few lines. On Sunday evening last I informed you, by the brig Water Witch, of the capture of several American vessels by the confederate steamer Alabama, Captain Semmes, viz, ship Ocmulgee, Captain Osborn; Ocean Rover, Captain Clark; bark Alert, of New London, Captain Church; schooner Weather Gauge, Captain Small, of Provincetown; schooner Starlight, Captain Doane. The masters and crews are all on shore here. There are also five American whalers lying at anchor, afraid to proceed on their voyage, viz, bark Eagle, Captain Allen; bark Oceola; bark Gratitude; ship George Howland and two others. Captain Doane and Captain Small go by this opportunity, and will give you more information. I again beg you will send a vessel for the masters and crews who are now on shore here. Provisions are getting short, and consequently high, and the inhabitants wish to get quit of them. There are some men going by this opportunity. By the next vessel I will send their names.

(Signed) JAMES MACKAY, JR.

P. S.—[By Mr. Dabney, apparently.]—Since receiving the above, the following vessels have been heard of as burnt by the Alabama, or some other confederate steamer near Flores: Schooner Altamaha, of Sippican; schooner Admiral Blake, of Sippican; bark Benjamin Tucker, of New Bedford; bark Oceola, Captain Hogan; and the Courser, supposed to be of New Bedford. All engaged in the whaling business.

FAYAL, *September* 19, 1862.

[Inclosure 3 in No. 15.]

Depositions.

CONSULATE OF THE UNITED STATES FOR THE AZORES.

Samuel H. Doane, late master of schooner Starlight, of Deer Island, deposes on oath as follows: On the 7th of September, 1862, I was on board the Starlight, Sta. Cruz Flores bearing northwest five miles, when a steamer bearing a British man-of-war flag approached from the southwest, and when within one mile and a half fired a lee gun. As I saw a ship in-shore, I thought the gun was fired at her. The steamer then hauled down the English flag, fired a weather gun, shotted, at me, the ball passing between my masts, and then hoisted the confederate flag. I then hoisted the American ensign and kept on toward Sta. Cruz, when he fired again at me, and the ball passed
[19] within two feet of the *main topmast. Seeing escape hopeless I hove to. He

then sent a boat aboard, and the officer ordered me to take my papers and go aboard the steamer in his boat, which I did; the officer with men remaining on board the schooner. My schooner was laden with passengers for Boston, men and women, mostly Portuguese. When I got aboard the steamer I was taken to the cabin, when the lieutenant said to me, presenting me to the commander, "This is Captain Semmes." The commander was a medium-size man, slim, with gray hair, moustache and imperial, dressed all in gray. The officers were in blue with navy buttons.

The captain, after examining my papers, ordered me to return to the schooner and bring all Americans on board. When we came aboard we were put on one side of the deck and asked where we belonged. Finding we were all northerners he put us all in irons without asking us to enlist. We were not otherwise abused. We were allowed nearly all our clothes: but they took my instruments, charts, and money. We were kept in irons for about eighteen hours. The passengers were left on board the schooner. We were taken about 6 p. m., the 7th instant, and on the 8th, at 11 a. m., were set adrift in our own boat, when about three miles from Flores, and pulled to shore. The passengers were previously landed by the steamer's boats.

Before I left the schooner I returned the passage-money to as many of the passengers as I could, distributing all I had, except $100. This being reported to Captain Semmes he said in my hearing that he would have them all searched in the morning, and would take all he could find; but the next morning, there being other vessels in sight, he concluded to set them ashore in haste, to be at liberty to chase the other sails.

The steamer is wooden, and not iron-plated, long, narrow, and straight, low in the water, bark-rigged; some might think her barkantine-rigged when her mainsail is not set, as the mainmast has a long drop; but I am positive that the mainsail is square. Her armament consists of six 32-pounders, and two large 8-inch pivot-guns amidships, the forward rifled. I saw the rifling. Hemp sails, wire rigging. She may be known by the long drop to her fore and main-sails, and her top-gallant sails being broad, and with very short hoist. The master-at-arms said there were 78 aboard, all told. I counted 52 seamen and 12 firemen. All the men forward are English and Irish, no Americans. The officers are southerners, and with the exception of the captain and first lieutenant seem ignorant of their sea-duties. The discipline on board was not very good, though the men seemed to be good seamen. They were over an hour setting the two top-gallant sails. The men appeared to be dissatisfied. The master-at-arms and several seamen told me that there was another steamer, named the Barcelona, in company, commanded, they said, by Coxetter. They said she was near Fayal, and they expected to meet her soon. Some of the men said they were going south to look after whalers, as they were well posted about the cruising-grounds. The English engineer told me that they expected more men in a few days. The officers said they were bound to have Mr. Dabney's bark Azor, if they stopped around for a month.

(Signed) SAMUEL H. DOANE.

FAYAL, *September* 19, 1862.

CONSULATE OF THE UNITED STATES FOR THE AZORES.

George W. Luce, late first mate of the whaling-ship Ocmulgee, of Edgartown, deposes as follows: On the 5th of September, 1862, I was on board the Ocmulgee; at noon, after a chase for whales, we had one large whale alongside, were about forty-five miles due west of Vico; a steamer, bearing the British man-of-war colors, approached under sail from the southeast and fired a lee gun when about three miles from us, then came near, hove to, and sent a boat aboard of us. The officer in charge, the second lieutenant, said that he was sorry to inform us that we were a prize to the confederate steamer Alabama. He told our captain to take his papers and go aboard the steamer, which he did. He told us to cast the whale adrift; but as we could not do it immediately he ordered me to follow the steamer as we were. In about an hour our captain returned, accompanied by the steamer's first lieutenant, who told us to go aboard the steamer, and that the captain and I could take a trunk of clothes apiece, but that the rest of the ship's company could have only a bag each, as they did not want to be lumbered up. We went aboard in our boats, which they took in tow, after using them to bring some stores, cordage, &c., from the ship to the steamer. Both vessels lay together, head-yards aback, all night, they intending to take more provisions from our ship; but at daylight they raised four vessels, and determined to start in pursuit at once; therefore, shooting the two dogs which had been the only living things left aboard our ship, they set her on fire and left her. They then made sail and chased a ship which proved to be French, and another which proved to be English, while the other two were so far to windward that they could not reach
[20] them *without getting up steam, which they did not wish to do. All the time we were aboard they had their propeller hoisted up, and they worked under sail, though they kept their fires banked. All our officers were put in irons: the crew

were not. We were kept on deck under a sail, and treated without other abuse than being ironed. Our food was rather poor; but it was said to be like the men's rations. We were kept aboard about fifty-two hours, and when about six miles from Flores they let us go ashore in three of our own boats. Just after we left the steamer we saw her take the schooner Starlight, just before dark on the 7th of September. The discipline aboard the steamer was very poor. The master-at-arms told me there was another steamer in company, and not far off, both built in Liverpool, and alike. I heard some of our men say that they were told aboard the steamer that she, the Alabama, was the 290. The master-at-arms, and third lieutenant, and a midshipman said they were bound to have Mr. Dabney's bark Azor, because he would not sell them coal.

(Signed) GEORGE W. LUCE.

FAYAL, *September* 19, 1862.

I, Benjamin Dexter, second mate aboard the Ocmulgee, having heard the above statement read, corroborate it in all particulars, and furthermore testify that the master-at-arms of the Alabama told me she was the 290.

(Signed) BENJAMIN DEXTER.

FAYAL, *September* 19, 1862.

I, Elijah Johnson, boat-steerer aboard the Ocmulgee, having heard the above statement read, confirm it in every particular, and furthermore state that I was told by some of the Alabama's crew that they had received their guns from a bark close by Terceira, which bark was going to bring her six more guns, as well as ammunition, and coal, and men. The crew of the Alabama was English and Irish; the officers southerners; the second lieutenant, a slim, very young man, they said was Jeff. Davis's son.

(Signed) his ELIJAH + JOHNSON. mark.

[Inclosure 4 in No. 15.]

Memorandum.

CONSULATE OF THE UNITED STATES FOR THE AZORES.

The schooner Weather Gauge, of Provincetown, was captured by the Alabama near Flores, on the evening of the 9th of September, and was burned on the 11th instant, the captain, Samuel Small, and his crew being put ashore at Flores, after they had given their parole not to serve against the South till exchanged. Captain Small, in his deposition, states the same facts, and gives the same description of the Alabama and her officers as Captain Doane, Mr. Luce, &c. In addition he states the guns to be of English make, some bearing the name of ——— Preston & Co. He also states that the Alabama's steering-wheel is forward of the mizzenmast, and bears the inscription "Aide toi et Dieu t'aidera."

FAYAL, *September* 19, 1862.

[Inclosure 5 in No. 15.]

Mr. Dudley to Mr. Adams.

UNITED STATES CONSULATE,
Liverpool, October 30, 1862.

SIR: I have the honor to inclose you copies of the depositions of Captain Julius, of the ship Tonawanda, Captain Harmon, of the bark Wave Crest, and Captain Johnson, of the brig Dunkirk. They detail the capture of their respective vessels by the rebel privateer Alabama, late 290.

I am, &c.,

(Signed) THOMAS H. DUDLEY.

[21] *[Inclosure 6 in No. 15.]

Depositions.

I, Theodore Julius, master of the ship Tonawanda, of Philadelphia, and being sworn, says: I sailed with said ship from Philadelphia on the 30th September, bound for Liverpool. We got along very nicely after leaving the capes, with very fine weather and the prospect of a short passage, till the 9th instant at 4 p. m., when, in latitude 40° 30′ north and longitude 54° 30′ west, we were captured by the rebel steamer Alabama. I was taken on board of her, and officers left in charge of the ship. When I got on board I found the captain and crew of bark Wave Crest, from New York for Cardiff, and brig Dunkirk, from New York for Lisbon, all prisoners on deck, and all in irons, their vessels having been burned two days previously. There was a brig in sight at this time, and the steamer made sail, our ship following. When everything was trimmed, I was conducted into the cabin, where I found Captain Semmes, the first lieutenant, and captain's clerk. After asking a few desultory questions, I was put on oath to answer. I found that our women passengers were a great trouble to them, and I built good hopes from that that we should get clear. I offered to draw on Brown, Shipley & Co. for a reasonable sum to let the ship off, but that was no use, as the captain said they had plenty of money, and at any rate Brown, Shipley & Co. would not pay, notwithstanding anything I might assert to the contrary. I was taken forward among the prisoners to await the issue of the chase. The captain's clerk conducted me, and I had a long conversation with him, during which I was very much on my guard, and I found that he was very intimate with a friend of mine at New Orleans. I temporized, &c., and am certain I created a favorable impression. The chased brig, after boarding, proved to be English. We were then hove to, and I was sent for into the cabin, where the same parties were present as before. The captain told me that had the brig proved American he would have put us all on board and burned the Tonawanda. I told him that on account of the women and children on board with their luggage that would have proved a very dangerous business, as there was considerable sea on. He then told me he would take a ransom-bond for the present, and that he would return it if he burned the ship. We had quite a controversy about the amount of the bond; he had ordered it filled up for $100,000, but eventually settled down to $80,000, for which amount it was given on the following conditions: "I am held and firmly bound, and I do hereby bind the said Thomas P. Cope and Francis R. Cope, their and my heirs, executors, and assigns, well and truly to pay unto the president of the Confederate States of America, for the time being, at the conclusion of the war, the amount of $80,000 current money of the said Confederate States; and the ship Tonawanda, her tackle and apparel, are hereby mortgaged for the payment of this bond." After giving the above, I gave my word of honor to follow the ship, and was put on board the Tonawanda about 9 p. m., and all persons belonging to the Alabama returned to her, with one colored boy, our passenger-cook, he belonging to Delaware, a slave State, and being without protection or free papers. We continued following in her wake till noon, the 10th, when they made signals they were going to send a boat on board. When the boat came, I was ordered to go on board the steamer again, and to take some change of clothes with me as I should stay some days. At the same time we were ordered to send two of our boats to remove the prisoners from the Alabama to our ship, all of which was done, and all the prisoners of all the vessels, ours included, signed a parole. When I got on board, the captain sent for me on the quarter-deck, when we had a very long conversation on nearly all subjects connected with the war. He apologized for my having to remain on deck, as his own officers and crew had not sufficient accommodation; but on consideration of my giving my word not to converse with the officers of the ship, he allowed me to go about the ship without irons on, I being the only prisoner this cruise to whom that privilege was granted. He told me that he should keep me some days. If he took a prize not as valuable as ours, he would transfer us to her and burn our ship, but if she proved anything near our value, that our ship would be spared, but that he was very anxious to burn her. That night they chased and boarded a German ship. The afternoon of the 11th they captured and burned the ship Manchester, a more valuable prize than the Tonawanda; she was only one year old, had 60,000 bushels wheat, 110 bales cotton, &c., in her cargo. I was sent for to the cabin and told that the Tonawanda would certainly be released, but that he should keep her a few days longer to put some more prisoners on board; he considered her now a cartel in the employ of the confederate government. I
[22] argued the point that we *would be very short of provisions and water, particularly the latter, as, with the Manchester's crew, we had about 170 persons on board already; but he said I could easily accommodate 250, and he would see about water, &c. I then told him that as I was master of a cartel he ought to allow me to sleep on board below, as it would be murder to keep me on deck another night. He said he would be very glad to put me below if he had any place. His clerk spoke up and said they could make room for me in the steerage. Then the non-intercourse act was

taken off, and I was permitted to go all over the ship, on deck or below, and to talk to whom I pleased. The 12th passed without seeing any sail. The 13th was dirty weather, with thick and rain; and I told the officers during the day, at every opportunity, that it would be thick that night; that they would certainly lose my ship, and that they had better put me on board. That afternoon they were very much frightened, as we saw a ship under very easy sail, with a vane at her mainmast-head, which they took to be a pendant, and supposed her to be a disguised man-of-war. They cleared the ship for action, and got steam up ready for running. I was appealed to three different times, and a spy-glass handed to me, and I always pronounced it the same thing—not an American, but a foreign merchant-ship. I was requested to go below during the action, but declined, as I was not a bit afraid. It proved to be a Spanish merchant-ship. As soon as that was ascertained I was called aft again; the captain told me that if I would give my word of honor to proceed direct to Liverpool, and without any additions to provisions and water, he would let me go. I accepted, of course, being then, by their account, in latitude 40° 30′ and longitude 59° 38′ west, or over five degrees further west than when we were captured. I was put on board, and set sail for Liverpool at 6 p. m. I have a copy of the bond on board attested by the captain's clerk. The Alabama or 290 is a splendid vessel, and the fastest under canvas I ever had my foot on board of, and I have no doubt she is under steam, as she has very powerful machinery. She is 225 feet long, entirely built of wood—they say on board of teak. She is calculated to remain at sea as long as they like, as they condense all the water they use: it takes 1 pound of coal to make a gallon of water, and they have now 300 tons of coal on board, and the instance mentioned before is the only time they raised steam since they have been out. I do not think there is a ship in our Navy that can catch her. Her armament consists of six 32-pounders broadside-guns, one 68-pounder midships between main and mizzen masts, and one 100-pounder rifled cannon midships forward of the mainmast. I judged there were about 100 persons on board, mostly English man-of-war's men. I do not believe there is an American-born seaman on board. They are trying to ship all the men they can out of the prizes. They got some out of every ship's company that is now on board, except our own ship, from which they took the black boy.

John E. Harmon, being sworn, says: I was master of the bark Wave Crest, of New York, burden 408 tons. We sailed from New York 28th September last for Cardiff, laden with wheat and flour. Nothing remarkable happened until the 7th of October, at daylight of which, in latitude 40° 20′ north, longitude 54° 20′ west, we made a vessel to windward about a mile distant. She had a flag, but we could not make it out. When she saw us she fired a blank gun, and we hove to. She then sent a boat to us, and we made out the flag to be the rebel flag. The crew of the boat were armed, and the officers informed me that my vessel was a prize to the confederate steamer Alabama, and requested me to go on board the steamer with my papers. I accordingly went on board with my papers and delivered them to the captain, (Semmes.) He looked them over. He asked me if I was interested in the vessel, and some other questions which I don't remember. He then informed me he should destroy the vessel and cargo, and told me to go on board and pack up with my crew. I was then sent back on board with a boat's crew. About noon we were taken on board the steamer and put in irons. They stripped the bark of what they wanted, and then commenced firing shells at her, but without effect; I did not see any strike her. About 4.30 p. m. a boat's crew were sent to set fire to her, which they did, and then made sail to the westward. We saw our vessel burning until 9 p. m.; her masts had then fallen, and she was a mass of flame. The captain, while I was in the cabin, asked me to join him. He said as I was Maryland-born I ought; that he was a Marylander himself. I made him no answer. About 9 the same night the brig Dunkirk, of New York, was captured and destroyed, and her crew brought on board the steamer and ironed like ourselves. The Alabama kept working up to the westward, and on the 9th captured the Tonawanda, of Philadelphia. On the 11th she captured the Manchester, of New York, which was also burnt. The Tonawanda was kept in company, and on the 10th I and my crew were transferred to the Tonawanda, as well as the crew of the Dunkirk, on parole, which we
[23] signed after we got on board the Tonawanda. The Manchester's crew were put on board the next day. On the 13th the Tonawanda was released and proceeded to Liverpool, where we arrived on the 27th October. While I was on board the Alabama the crew were practiced at the guns two or three times. There did not seem to be much discipline. She was never under full sail with a good breeze while I was on board, but I should judge she could make twelve knots under canvas.

(Signed) JOHN E. HARMON.

Sworn and subscribed to before me, at Liverpool, this 28th day of October, 1862.

(Signed) THOS. H. DUDLEY, *Consul.*

We were all kept in irons on the deck of the Alabama. Had to sleep upon the deck. There was no distinction made between my sailors and myself, except they gave me a mattress to sleep on; the men had a board. All that we had to protect us from the weather was a piece of canvas. This did not do it; we were wet most of the time. The irons were kept upon us both day and night; were not taken off while we ate. We had to sleep in our wet clothes, not being able to take off our boots. There were nineteen of us confined to a space of about fifteen feet square. A guard with a sword and revolver were kept over us all the time.

(Signed) JOHN E. HARMON.

Sworn and subscribed before me, at Liverpool, this 28th day of October, 1862.

(Signed) THOMAS H. DUDLEY, *Consul.*

On this 28th day of October, 1862, before me, Thomas H. Dudley, consul of the United States at Liverpool, personally came Samuel B. John, from the State of New York, late master of the brig Dunkirk, of New York, and being duly sworn, says:

I was master of the brig Dunkirk, of New York, owned by C. & E. J. Peters, of the city of New York; that we sailed from New York the 29th of September with a cargo of flour and staves for Lisbon, in Portugal. The vessel had been chartered and loaded by Giro & Franceia, of New York. Nothing occurred until half-past 7 p. m. civil time, October 7, when, in latitude 40° 23′ north, and longitude 54° 30′ west, discovered a sail on the port bow standing to the westward. When nearly abeam the strange sail tacked, hauling up under our lee bow, and fired a gun. Being then within short range of his guns and no chance of escape, backed foretop-sail, and was soon boarded by a boat with an armed crew. It was dark at the time, and could not see the flag she carried. After a few inquiries, the officers said the brig was a prize to the confederate war-steamer Alabama. I was ordered on board with all my papers. I was taken into the cabin to Captain Semmes. His lieutenant, by name of Kell, and secretary were present. The captain took my papers and examined them, breaking open a consignee's letter I had. He then said to his lieutenant, "I see nothing by these papers to clear this vessel, she being American; you will accordingly take the captain on board and allow him to take one trunk and one bag of clothing; all others one bag only; bring all persons out of the brig to the Alabama, and destroy her. While there I was put on oath and examined touching the vessel's cargo. At 9 p. m. returned on board the brig, packed up a few things, and the crew from the Alabama, by direction of the first lieutenant, then broke up the furniture in the cabin, and poured out a lot of lard on it and then set fire to it. We then left and were taken on board of the Alabama. There were nine of us, including myself. The brig was soon in a blaze, and continued to burn as long as we could see her. The vessel and her cargo were entirely destroyed. The charts, chronometer, and some of the provisions were taken by the Alabama. One of my crew, by name of David Leggett, who had been with Captain Semmes on the steamer Sumter, immediately joined the crew of the Alabama. Another by name of George Forrest, a deserter from the Sumter, was put in double irons. The rest of us were placed in irons and kept on deck for three days and three nights. We were exposed to the sea and weather during this time, and were often wet by the rain and spray. We were confined to a space of about twenty square feet. The man who had deserted from the Sumter was tried before a court-martial and sentenced.

On the 9th of October they captured the ship Tonawanda, from Philadelphia to Liverpool, commanded by Captain Julius. She was detained as a receiving-ship until the 13th instant. On the 11th the ship Manchester, from New York to Liverpool, loaded with grain, &c., was captured and fired after dark, and entirely destroyed. The crew of the bark Wave Crest were on board when we were captured. We were all placed on the Tonawanda, and permitted to leave on the 13th instant, and arrived here yesterday. At the time I was captured, and all the while I was on board the steamer,
[24] they were under *sail. She is a very fast sailer. She had consumed but very little of her coal, and had most of the coal she left with at time she started on her cruise. She has a condenser, and makes all the water they require on board.

(Signed) SAML. B. JOHNSON.

Sworn and subscribed to before me, this 28th day of October, 1862.

(Signed) THOMAS H. DUDLEY, *Consul.*

On this 22d day of October, 1862, before me, Thomas H. Dudley, consul of the United States of America at Liverpool, personally came Nathan Parker Simes, master of the ship Emily Farnum, of Portsmouth, New Hampshire, and, being duly sworn, deposed:

I am master of the Emily Farnum. We sailed from New York on the 20th of September, bound to Liverpool, with a cargo of flour and provisions. We proceeded with-

out anything of importance happening until the morning of the 3d of October, when we were in latitude about 41° north and longitude about 50° west. At daylight we made a large ship to leeward, bound the same way as ourselves. About 7 a. m. we made what appeared to us a small sail-vessel, standing to the westward. I took no further notice of her until I came up from breakfast, about a quarter past 8, when I sheared her close on our weather bow, and made her out to be a screw war-steamer, with the St. George's cross flying at her peak, and took her for an English man-of-war. I immediately set my colors, and she immediately ran down the English colors and ran up the confederate flag and fired a blank across our bow. The wind being light, I saw that we could not escape, and hove to. A boat was then lowered from the steamer and sent alongside, with two officers and four men, each armed with a cutlass and revolver. They all came on board, and one of the officers, who was the second lieutenant, hauled down our colors, and informed me I was a prize to the Confederate States steamer Alabama, Captain Semmes. The steamer then wore round, and gave chase to the ship to leeward. The second lieutenant having taken charge of our ship, we followed.

About 11 o'clock the other ship was brought to in the way we had been. She proved to be the Brilliant, of New York, from New York, bound for London. She and ourselves were then hove to, one on each quarter of the steamer. A boat was sent to the Brilliant, and her captain with his papers taken on board the steamer. About noon a second boat came to us, and I was ordered to the steamer with my papers, and I went. On reaching the steamer I was ordered to stand amidships until Captain Semmes was ready for me. While waiting I observed a large number of seamen in irons on the other side of the deck, and that the vessel had three long 32-pounders on each side, one 100-pounder rifled pivot-gun forward, and a 68-pounder rifled pivot-gun aft. The shot on the deck measured six and eight inches. Her crew were English, and consisted of 120, all told, and they were anxious to ship more. About 1 o'clock the captain of the Brilliant came on deck, and Captain Semmes ordered his first lieutenant, Mr. Kell, to go on board the Brilliant with him, and remove from her such provisions, tackle, and valuables as he saw fit, to the steamer. I was then ordered below into the cabin, where were Captain Semmes and his clerk, Mr. Smith. Captain Semmes demanded my papers, and then asked me the name of my ship; by whom she was owned; what her present value would be in New York; whether I had any certificate or proof that my cargo was otherwise than American property. My replies were taken down in writing.

I examined my papers, and, attached to one set of bills of lading, found the British consul's certificate that the goods described in the bill of lading annexed were the property of a British subject residing in Liverpool, J. B. Spence. Captain Semmes examined it and said it was a fraud, and not worth that. (snapping his fingers.)

He then asked me if I had a mail-bag. I had none. He then asked a number of questions as to the disposition of our Army and Navy, and whether there were any government vessels on the lookout for his vessel. He then asked me how long it would take me to go to Liverpool in case he should release me. He said with the number of prisoners he had on deck, together with our two ships' crews, he would be pushed for room in case of falling in with any of our government vessels, as he intended to fight anything of his own metal. His clerk then filled out a parole in writing, which he gave me the option of signing or of remaining in irons a prisoner of war, until regularly exchanged. I signed it. I noticed in the cabin from fifteen to twenty chronometers, screwed to the transom. I then went on deck. While in the cabin he told me he had burnt eleven whale-ships off the Western Islands, and landed their crews, 190 in number, in that vicinity. That he had a particular antipathy to New Bedford people on account of their holding war-meetings daily, and sending stone-fleets to block up Charleston harbor, and he was going to retaliate by destroying all the property he could get hold of.

[25] *I remained on deck until about 5 p. m., during which time the steamer's boats and the boats of the Brilliant were transferring stores, &c., from the Brilliant. About 3 o'clock the lookout on the fore-top gallant-yard reported a vessel in sight. About 4 Captain Semmes came on deck, and informed me he was going to release me, providing I would take his prisoners to Liverpool, which I agreed to do, and soon after they began transferring the prisoners to my ship. I observed that there was no discipline on board the steamer excepting when Captain Semmes or Lieutenant Kell was on deck. About 5 o'clock my papers were returned to me with the following indorsement on the register:

"The ship Emily Farnum, of New York, was captured by the Confederate States steamer Alabama on this, the 2d day of October, 1862, and released because of a certificate of neutral cargo being found among her papers, and to serve the purposes of a cartel ship.

(Signed) "R. SEMMES,
"*Commander, Confederate States Navy.*"

I was then sent on board my ship by one of her boats. When I got on board my ship I found there Mr. Smith, Captain Semmes's clerk, with parole for my officers and crew

to sign, which they all did but one, who shipped in the steamer. All my crew and officers were asked to ship, and told they would have £4 10*s.* a month, and lots of prize-money. They pressed my second mate very much, finding out that he had been in the United States Navy. Only the one mentioned volunteered. After they had signed the parole they were informed that if any of them were caught in arms, either in the Yankee army or navy, they would be shot or hung. I was told that two of the Brilliant's crew had shipped in like manner. They then left us with seventy-eight prisoners, being the captains, officers, and crews of ship Brilliant, of New York, bark Virginia, of New Bedford, bark Enoch Barnard, of New Bedford. During the day and night the wind was very light. At 6 p. m. the Brilliant was fired by people from the steamer, and at 7 o'clock she was all in flames. They steamer during the night was visible a little to windward. It was moonlight, so that we saw her all night, and also the Brilliant. The next morning, from our mizzen topsail-yard, and in the direction of the burning ship, I saw the steamer close to and in chase of another ship, probably the one reported by the lookout the day previous. Had very light winds that day, but saw no more of the steamer, but at night saw the fire of a burning vessel in the direction where the steamer was last seen.

While on board the steamer I noticed that her screw was triced up, and was informed by her officers that they merely get up steam for condensing water, or in a hard chase. While I saw her she never had steam up. The officers told me they could get up steam in twenty minutes, and that she could steam fifteen knots and sail under canvas only thirteen knots.

(Signed) N. P. SIMES,
Master of Ship Emily Farnum.

Sworn and subscribed to at Liverpool this 22d day of October, 1862.

(Signed) THOMAS H. DUDLEY, *Consul.*

No. 16.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *December* 19, 1862.

SIR: I have the honor to acknowledge the receipt of your letter of the 20th ultimo, in which, under instructions from your government, you submit, for the consideration of Her Majesty's government, papers confirming the truth of the allegations which you made to me some time ago as to the intentions with which the vessel formerly known as No. 290, but now called the Alabama, was fitted out at Liverpool; and you observe that those allegations are now fully proved by the hostile proceedings of that vessel since she left the United Kingdom.

You pass in review the history of the Alabama both before and since she sailed from Liverpool; and you state that the facts being admitted, they present to the consideration of all civilized countries a series of novel questions of the gravest character. You say that it is obviously impossible to reconcile the toleration by any one nation of similar undertakings in its own ports to the injury of another nation with which it is at peace, with any known theory of moral or political obligation; and you add, with some further observations in the same sense, that the reciprocation of such practices could only in the end lead to the utter subversion of all security to private property upon the ocean.

You, however, say that it is by no means your desire to imply an intention on the part of Her Majesty's government to countenance any such idea. You admit that you *are aware of the measures adopted at a very early date with reference to the Alabama, and of the orders subsequently issued to detain that vessel as soon as legal opinions were obtained; orders which it was not possible for the authorities to execute, because at the very moment when they were issued the Alabama made her escape from Liverpool.

[26]

You finally state that you have been instructed to solicit redress for the national and private injuries sustained by the proceedings of this

vessel, as well as a more effective prevention of any repetition of them in British ports hereafter.

Before I proceed to examine the justice of these demands, it will be convenient that I should advert to the circumstances to which you call my attention as having occurred soon after the breaking out of the French revolutionary war. You observe that on that occasion remonstrances were addressed by the British government to that of the United States respecting the fitting out of privateers in United States ports with an intent to prey upon British commerce; and that the demands of the British government were admitted by the United States, and were formally recognized in the seventh article of the treaty between the two countries of the 19th of November, 1794.

But an examination of the actual occurrences, and of the history of that remarkable period, presents a state of facts materially different from those relating to the Alabama. Those facts may be shortly stated as follows:

The revolutionary government of France had openly avowed its determination to disregard all the principles of international law which had been acknowledged by civilized states; and that government proceeded to put in force its determination by claiming to equip as a matter of right, and by actually equipping privateers in the neutral ports of the United States, by sending those privateers forth from those ports to prey upon British commerce by bringing prizes into the neutral ports, and by then going through some scant forms of adjudication.

This was the avowed system upon which the agents of belligerent France claimed to act, and upon which, owing to the temporary superiority of her naval force, they did for a short period act in the neutral ports and waters of the United States, notwithstanding the remonstrances of the United States Government.

It was these several facts, namely, the open and deliberate equipment of privateers in American ports by the French, the capture by those privateers of British vessels in United States waters, and then bringing them as prizes into United States ports, which formed collectively the basis of the demands made by the British plenipotentiaries. Those demands had reference not to the accidental evasion of a municipal law of the United States by a particular ship, but to a systematic disregard of international law upon some of the most important points of neutral obligation.

This is apparent from the whole correspondence of the British government with the Government of the United States, and from the replies of Mr. Jefferson to Mr. Hammond, the British minister. Consequently neither the complaints of the British government in 1793, nor the treaty of 1794, have any bearing upon the question now under discussion.

With regard to the claim for compensation now put forward by the United States Government, it is, I regret to say, notorious that the Queen's proclamation of the 13th of May, 1861, enjoining neutrality in the unfortunate civil contest in North America, has in several instances been practically set at naught by parties in this country. On the one hand, vast supplies of arms and warlike stores have been purchased in this country, and have been shipped from British ports to New York, for the use of the United States Government. On the other hand, munitions of war have found their way from this country to ports in possession of the government of the so-styled Confederate States.

These evasions of the neutrality prescribed by the Queen's proclamation have caused Her Majesty's government much concern, but it is not difficult to account for what has occurred.

Such shipments as I have spoken of may be effected without any breach of municipal law, and commercial enterprise in this country, as elsewhere, is always ready to embark in speculations offering a prospect of success, or in which, at all events, the promise of gain is supposed to be greater than the risk of loss.

British subjects who have engaged in such enterprises have been left by Her Majesty's government to abide by the penalty attaching to their disregard of the Queen's proclamation of neutrality, that penalty being by international law the condemnation as prize of war of vessel and cargo, if captured by a belligerent cruiser, and duly condemned in a competent prize court.

Her Majesty's government have nevertheless availed themselves of every fitting opportunity to discourage these enterprises, and I have the honor to refer you, in illustration of the truth of this, to the [27] answer which I caused to be returned on the 6th of July *to a memorial from British merchants and ship-owners at Liverpool, and of which I furnished you confidentially with a copy in my note of the 4th of August.

It is right, however, to observe that the party which has profited by far the most by these unjustifiable practices has been the Government of the United States, because that Government having a superiority of force by sea, and having blockaded most of the confederate ports, has been able, on the one hand, safely to receive all the warlike supplies which it has induced British manufacturers and merchants to send to United States ports in violation of the Queen's proclamation, and, on the other hand, to intercept and capture a great part of the supplies of the same kind which were destined from this country to the Confederate States.

If it be sought to make Her Majesty's government responsible to that of the United States, because arms and munitions of war have left this country on account of the confederate government, that confederate government, as the other belligerent, may very well maintain that it has a just cause of complaint against the British government, because the United States arsenals had been replenished from British sources.

Nor would it be possible to deny that, in defiance of the Queen's proclamation, many subjects of Her Majesty, owing allegiance to her Crown, have enlisted in the armies of the United States. Of this fact you cannot be ignorant.

Her Majesty's government, therefore, have just grounds of complaint against both of the belligerent parties, but most especially against the Government of the United States, for having systematically, and in disregard of that comity of nations which it was their duty to observe, induced subjects of Her Majesty to violate those orders which, in conformity with her neutral position, she has enjoined all her subjects to obey.

Great Britain cannot be held responsible to either party for these irregular proceedings of British subjects, and an endeavor to make her so would be about as reasonable as if Her Majesty's government were to demand compensation from the United States for the injuries done to the property of British subjects by the Alabama, resting their demand on the ground that the United States claim authority and jurisdiction over the Confederate States, by whom that vessel was commissioned.

So far as relates to the export of arms and munitions of war by subjects of Great Britain from British ports, for the use of the confederates, it is a sufficient answer to say that the municipal law of this country does not empower Her Majesty's government to prohibit or interfere

with such export, except in extraordinary cases, when the Executive is armed with special powers; and, with regard to the law of nations, it is clear that the permission to export such articles is not contrary to that law, and that it affords no just ground of complaint to a belligerent. The authorities for this latter position are numerous and unconflicting, but it may suffice to refer to passages on the subject in the works of two American writers of high and admitted authority. The passages are as follows:

1. It is not the practice of nations to undertake to prohibit their own subjects, by previous laws, from trafficking in articles contraband of war. Such trade is carried on at the risk of those engaged in it, under the liabilities and penalties prescribed by the law of nations or particular treaties. (Wheaton's "International Law," sixth edition, 1855, page 571, by Lawrence.)

2. It is a general understanding that the powers at war may seize and confiscate all contraband goods without any complaint on the part of the neutral merchant, and without any imputation of a breach of neutrality in the neutral sovereign himself. It was contended on the part of the French nation, in 1796, that neutral governments were bound to restrain their subjects from selling or exporting articles contraband of war to the belligerent powers. But it was successfully shown, on the part of the United States, that neutrals may lawfully sell, at home, to a belligerent purchaser, or carry, themselves, to the belligerent powers, contraband articles, subject to the right of seizure *in transitu*. This right has since been explicitly declared by the judicial authorities of this country. (United States.) The right of the neutral to transport, and of the hostile power to seize, are conflicting rights, and neither party can charge the other with a criminal act. (Kent's "Commentaries," vol. i, p. 145, eighth edition, 1854.)

In accordance with these principles, the President's message of 31st December, 1855, contains the following passage:

In pursuance of this policy, the laws of the United States do not forbid their citizens to sell to either of the belligerent powers articles contraband of war, or take munitions of war or soldiers on board their private ships for transportation, and although in so doing the individual citizen exposes his property or person to some of the hazards of war, his acts do not involve any breach of national neutrality, nor of themselves implicate the government.

[28] As regards the sailing of the Alabama from Liverpool, I cannot do better than *refer you to the circumstances respecting that vessel with which I have already had the honor to make you acquainted. In my letter of the 28th of July I informed you that it was requisite to consult the law-officers of the Crown before any active steps could be taken in regard to that vessel. In my letter of the 22d of September I explained that, from the nature of the case, some time was necessarily spent in procuring the requisite evidence; that the report of the law-officers was not received until the 29th of July, and that on the same day a telegraphic message reached Her Majesty's government stating that the vessel had that morning sailed. Instructions were then dispatched to detain her should she put in either at Queenstown or Nassau, to one or other of which ports it was expected that she would go, but the Alabama did not call at either of those places. On the 4th of October I stated to you that much as Her Majesty's government desired to prevent such occurrences, they were unable to go beyond the law, municipal and international; and on the 16th of that month I replied to your observations with reference to the infringement of the foreign enlistment act, by remarking that it was true that the foreign-enlistment act, or any other act for the same purpose, might be evaded by subtle contrivances, but that Her Majesty's government could not on that account go beyond the letter of the existing law.

However, it is needless that I should pursue this branch of the question further, since you admit that you are aware that the Alabama sailed not only without the direct authority or indirect permission of Her Majesty's government, but in opposition to the municipal law, and in spite of earnest endeavors made to enforce it.

That this should have happened is a circumstance not calculated to excite much surprise in the United States, for two reasons: first, because the principal municipal law of the United States (passed almost at the same time as that of this country, and, it is believed, after a full understanding between the two states) is, in fact, almost identical with that of Great Britain upon this subject; and, secondly, because its notorious evasion, during the late war waged by Great Britain and her allies against Russia, was the subject of remonstrances on the part of Her Majesty's representative at Washington to the United States Government.

Great Britain was then, as on other occasions, assured that every effort which the law would permit had been made to prevent such practices; that the United States Government could only proceed on legal evidence, the law as to which is almost, if not entirely, the same as in this country; and that without such evidence no conviction could be procured.

In the case of the Alabama, it is not denied that strict orders were given for her detention as soon as it appeared to the legal advisers of the Crown that the evidence might be sufficient to warrant them in advising such a course, and that the Alabama contrived to evade the execution of those orders.

Her Majesty's government cannot, therefore, admit that they are under any obligation whatever to make compensation to United States citizens on account of the proceedings of that vessel.

As regards your demand for a more effective prevention, for the future, of the fitting out of such vessels in British ports, I have the honor to inform you that Her Majesty's government, after consultation with the law-officers of the Crown, are of opinion that certain amendments might be introduced into the foreign-enlistment act, which, if sanctioned by Parliament, would have the effect of giving greater power to the executive to prevent the construction, in British ports, of ships destined for the use of belligerents. But Her Majesty's government consider that, before submitting any proposals of that sort to Parliament, it would be desirable that they should previously communicate with the Government of the United States, and ascertain whether that Government is willing to make similar alterations in its own foreign-enlistment act, and that the amendments, like the original statute, should, as it were, proceed *pari passu* in both countries.

I shall accordingly be ready to confer at any time with you, and to listen to any suggestions which you may have to make by which the British foreign-enlistment act and the corresponding statute of the United States may be made more efficient for their purpose.

I am, &c.,

(Signed) RUSSELL.

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[29] *No. 17.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, December 30, 1862. (Received December 31.)

MY LORD: I have the honor to acknowledge the reception of your lordship's note of the 19th instant, in reply to the representation I had been instructed to submit to your consideration, touching the ravages

committed on the commerce of the United States by a vessel of war built and fitted out in a port of this kingdom, and for the most part manned by Her Majesty's subjects. So far as that note responds to the two great objects of inquiry which I had been directed to propose, my duty has been performed by the transmission, without loss of time, of a copy of it for the consideration of my Government. But your lordship has done me the honor to touch upon several collateral topics incidentally connected with the reasoning contained in my note, in a manner which seems to require from me a somewhat extended explanation.

The first of these to which my attention has been particularly directed relates to the fact, which your lordship appears readily to admit, that Her Majesty's proclamation of the 13th of May, 1861, enjoining neutrality in the unfortunate civil contest in North America, has been practically set at naught in this kingdom. Much as it may impair the confidence heretofore so generally and justly entertained in the ability of Her Majesty's government to enforce her authority within her own dominions, I am not aware that in the representation I had the honor to make upon this particular occasion, any reasoning of mine was made to rest upon it. The question, as connected with the case of No. 290, was presented by the eminent counsel on whose opinion I relied, mainly on the ground that the building and equipment of that vessel was a gross violation of the municipal law of this kingdom. It was expressly stated by Mr. Collier that "it appeared difficult to make out a stronger case of infringement of the foreign-enlistment act, which, if not enforced on this occasion, is little better than a dead letter." That this position was a correct one is fully confirmed by the report subsequently made by Her Majesty's law-officers, and by the later efforts of Her Majesty's government to act under the law. It is not, then, the nullity of Her Majesty's proclamation that is now in question. It is rather the admitted fact of a violation of a statute of this kingdom intended to prevent ill-disposed persons from involving it in difficulty by committing wanton and injurious assaults upon foreign nations with which it is at peace, of which Her Majesty's ministers are invited by a party injured to take cognizance, of which they do take cognizance so far as to prepare measures of prevention, but which, by reason of circumstances wholly within their own control, they do not prevent in season to save the justly complaining party from serious injury. On the substantial points of the case little room seems left open for discussion. The omission to act in season is not denied; the injury committed on an innocent party is beyond dispute. If in these particulars I shall be found to be correct, then I respectfully submit it to your lordship whether it does not legitimately follow that such a party has a right to complain and to ask redress. And in this sense it matters little how that omission may have occurred, whether by intentional neglect or by accidental delays having no reference to the merits of the question; the injury done to the innocent party giving a timely notice remains the same, and those who permitted it remain equally responsible.

It is in this view that the precedent which I had the honor to cite from the earlier history of the United States appeared to me to have much more pertinence than your lordship is inclined to attach to it. I still think that it has not attracted so much of your attention as it deserves. Your lordship will pardon me for suggesting that it was not because "the revolutionary government of France openly avowed its determination to disregard all the principles of international law which had been acknowledged by civilized states," or because of "a supposed temporary superiority of her naval force," it did "actually equip priva-

teers in the neutral ports of the United States, and send them forth to prey upon British commerce," &c., that the Government of the United States were induced to listen to the demands of the British government for redress. The claim that was actually made by France rested upon its interpretation of two articles of a solemn treaty, offensive and defensive, between France and the United States, which not without show of reason claimed for the former the right to fit out cruisers against its enemies in the ports of the United States. Although very properly denying this to be the correct version, the Government of the United States felt unwilling to act on a policy of repression until due notice given of its determination to abide by an opposite construction. In the interval, certain captures of British vessels took place, which the Government, because of its failure, for the reasons assigned, to prevent them, considered itself bound to make good. Here are the very words of Mr. Jefferson in his letter to Mr. Hammond:

[30] *Having for particular reasons forborne to use all the means in our power for the restitution of the three vessels mentioned in my letter of August 7, the President thought it incumbent on the United States to make compensation for them; and though nothing was said in that letter of other vessels taken under like circumstances and brought in after the 5th of June, and before the date of that letter, yet where the same forbearance had taken place, it was and is his opinion that compensation would be equally due.

From these words the deduction appears to be inevitable that the principle of compensation in the case derived its only force from the omission by the United States to prevent a wrong done to the commerce of a nation with which they were at peace. So likewise may it be reasonably urged in the present case, that the omission of Her Majesty's government upon full and seasonable notice to carry into effect the provisions of its own law designed to prevent its subjects from inflicting injuries upon the commerce of nations with which it is at peace, renders it justly liable to make compensation to them for the damages which may ensue.

That the British government of that day did consider itself equitably entitled to full indemnity, not simply for the hostile acts of Frenchmen in American ports, but for the loss and damage suffered on the high seas by reason of assistance rendered to them by citizens of the United States, will clearly appear by reference to the fourth article of a project of a treaty proposed by Lord Grenville to Mr. Jay, on the 30th of August, 1794. The words are these:

And it is further agreed, that if it shall appear that in the course of the war loss and damage has been sustained by His Majesty's subjects, by reason of the capture of their vessels and merchandise, such capture having been made either within the limits of the jurisdiction of the said States, or by vessels armed in the ports of the said States, or by vessels commanded or owned by the citizens of the said States, the United States will make full satisfaction for such loss or damage, the same being to be ascertained by commissioners in the manner already mentioned in this article.

If by the preceding representation I have succeeded in making myself clearly understood by your lordship, then will it, I flatter myself, be made to appear that in both these cases—that in 1794 as well as that in 1862—the claim made rests on one and the same basis, to wit, the reparation by a neutral nation of a wrong done to another nation with which it is at peace, by reason of a neglect to repress the cause of it, originating among its own citizens in its own ports.

The high character of Lord Grenville is a sufficient guarantee to all posterity that he never could have presented a proposition like that already quoted, except under a full conviction that it was founded on the best-recognized principles of international law. Indeed, it is ap-

parent on the face of the preamble that even the later statute law of both nations on this subject is but an attempt to give extraordinary efficacy to the performance of mutual obligations between states, which rest on a higher and more durable basis of justice and of right. It was on this ground, and on this alone, that Lord Grenville obtained the concessions then made of compensation for damage done to her commerce on the high seas by belligerent cruisers fitted out in the ports of the United States. I shall never permit myself to believe that Her Majesty's government will be the more disposed to question the validity of the principle thus formally laid down merely from the fact that in some cases it may happen to operate against itself.

This consideration naturally brings me back to the examination of that portion of your lordship's note which relates to the alleged violations in Great Britain of Her Majesty's proclamation by the respective parties engaged in this war. Although this subject be not absolutely connected with that on which I made my representation, I cheerfully seize the opportunity thus furnished me to attempt in some degree to rectify your lordship's impressions of the action of the Government of the United States even on that question.

Your lordship does me the honor to observe that I cannot be ignorant of the fact, which it is impossible to deny, "that in defiance of the Queen's proclamation many subjects of Her Majesty, owing allegiance to her Crown, have enlisted in the armies of the United States." "Her Majesty's government, therefore, have just ground for complaint against both the belligerent parties, but most especially against the Government of the United States, for having systematically, and in disregard of that comity of nations which it was their duty to observe, induced subjects of Her Majesty to violate those orders which, in conformity with her neutral position, she has enjoined all her subjects to obey."

As these words, taken in their connection, might seem to imply a serious charge against myself, as well as the Government of the United States, I must pray your lordship's pardon if I desire to know
[31] whether there be any particulars in my own conduct in * which your lordship has found the evidence for such a statement. So far as I have been made acquainted with the course of my own Government, or I remember my own, I must most respectfully take issue with your lordship upon it, and challenge you to the proof. That very many of the subjects of Great Britain have voluntarily applied to me for engagements in the service of the United States is most true. That I ever induced one of them to violate Her Majesty's orders, either directly or indirectly, is not true. That numbers of Her Majesty's subjects have voluntarily crossed the ocean and taken service under the flag of the United States I have reason to believe. That the Government of the United States systematically, and in disregard of the comity of nations, induced them to come over to enlist, I have not yet seen a particle of evidence to show, and, I must add, praying your lordship's pardon, I am authorized explicitly to deny. In response to a remonstrance made to me by your lordship, it is but a few days since, I took occasion, so far as my action was concerned, or the action of any of the officers of the United States in this kingdom, to place the country right before you on that score. After the very explicit retraction made in your lordship's reply to me, dated on the 16th instant, it is not without great surprise that I now perceive what I cannot but regard as a renewal of the imputation.

Your lordship is pleased carefully to join the two parties to this war as if in your estimation equally implicated in the irregular proceedings con-

ducted within this kingdom, and equally implicating the subjects of Great Britain in the violation of Her Majesty's proclamation. Hence it is argued that the omission to hold any one to his responsiblity affords no more just ground of complaint to one party than to the other. I cannot but think that your lordship has overlooked a just distinction to be observed in these cases, and in order to show it the more clearly I shall be compelled to ask your lordship to follow me in a brief investigation of the facts.

The only allegation which I find in your lordship's note in connection with the United States is this, that "vast supplies of arms and warlike stores have been purchased in this country, and have been shipped from British ports to New York for the use of the United States Government."

Admitting this statement to be true to its full extent, conceding even the propriety of the application of the term "vast" to any purchases that have been made for the United States, the whole of it amounts to this, and no more, that arms and warlike stores have been purchased of British subjects by the agents of the Government of the United States. It now here appears that the action of the British went further than simply to sell their goods for cash. There has been no attempt whatever to embark in a single undertaking for the assistance of the United States in the war they are carrying on; no ships of any kind have been constructed or equipped by Her Majesty's subjects for the purpose of sustaining their cause, either by lawful or unlawful means, nor a shilling of money, so far as I know, expended with the intent to turn the scale in their favor. Whatever transactions may have taken place have been carried on in the ordinary mode of bargain and sale, without regard to any other consideration than the mere profits of trade.

If such be, then, the extent of the agency of the United States on this side of the Atlantic during the present war, and no more, it appears clear from the positions assumed by your lordship, in the very note to which I have the honor to reply, that thus far they have given no reasonable ground for complaint at all. The citations to which your lordship has done me the favor to call my attention, as drawn from American authors of admitted eminence, all contribute to establish the fact that the mere purchase, or export by a belligerent from a neutral, of arms and munitions of war does not involve any censure on either party. I do not at the present moment entertain a design to question the correctness of that doctrine. As a necessary consequence, I can scarcely perceive the fitness of associating such actions as I have shown that of the United States to be in the same category with that of which the Government of the United States has heretofore instructed me to complain.

And here I beg to call your lordship's attention to the fact that it is not the mere purchase or exportation of arms and warlike stores by the agents of the insurgents in America of which I have ever complained. There is another, and a very important element in the case, to which your lordship does not appear to have given the consideration which, so far as one may be permitted to judge from the concurring testimony of all writers on international law, it certainly deserves. The United States have made an actual blockade of all the ports occupied by the insurgents—a blockade the validity of which Great Britain does not dispute. They are, therefore, entitled to consider every neutral who shall attempt to enter one of them, or carry anything to the besieged, as violating his neutrality and converting himself into an enemy. Hence, it happens that every British subject engaged in the work of

aiding the insurgents, by introducing contraband of war into blockaded ports, not only violates his duty to his sovereign, but commits an
[32] exceedingly *aggravated and injurious offense to the Government of the United States. To associate such proceedings with the mere purchase and export of arms on behalf of the United States, as of equal significance, would seem to be most inequitable. It is a fact that few persons in England will now be bold enough to deny, first, that vessels have been built in British ports, as well as manned by Her Majesty's subjects, with the design and intent to carry on war against the United States; secondly, that other vessels owned by British subjects have been and are yet in the constant practice of departing from British ports, laden with contraband of war, and many other commodities, with the intent to break the blockade and to procrastinate the war; thirdly, that such vessels have been and are insured by British merchants in the commercial towns of this kingdom with the understanding that they are dispatched for that illegal purpose. It is believed to be beyond denial that British subjects have been and continue to be enlisted in this kingdom in the service of the insurgents with the intent to make war on the United States, or to break the blockade legitimately established, and to a proportionate extent to annul its purpose. It is believed that persons high in social position and in fortune contribute their aid directly and indirectly in building and equipping ships of war, as well as other vessels, and furnishing money as well as goods, with the hope of sustaining the insurgents in their resistance to the Government. To that end the port of Nassau, a colonial dependency of Great Britain, has been made, and still continues to be, the great entrepot for the storing of supplies, which are conveyed from thence with the greater facility in evading the blockade. In short, so far as the acts of these numerous and influential parties can involve them, the British people may be considered as actually carrying on a war against the United States. Already, British property valued at £8,000,000 sterling is reported to have been captured by the United States for attempts to violate the blockade, and property of far greater value has either been successfully introduced, or is now stored at Nassau awaiting favorable opportunities.

If it is necessary to furnish to your lordship a clearer idea of the nature and extent of this warfare, it may, perhaps, be obtained by reference to the two papers which I have the honor to append to the present note. The one contains a list of screw-steamers and sailing-vessels which have been, or still are, engaged in this illegal commerce, furnished to me from observation by the consul of the United States at Liverpool. The other is a copy of a letter from the consul in London, giving a further list of vessels, together with some particulars as to the mode by which, and the persons by whom, this hostile system is carried on. Neither of these lists can be regarded as complete, but the two are sufficiently so for the present purpose, which is to place beyond contradiction the fact of the extensive and systematic prosecution by British subjects of a policy toward the United States which is uniformly characterized by writers on international law as that of an enemy.

I am not unaware of the regret expressed in your lordship's note at the existence of this state of things, as well as of the readiness with which you have acquiesced in the possible application by the forces of the United States of the penalty held over the heads of the offenders in Her Majesty's proclamation. But my present object in referring so much at large to these offenses is to show the great injustice of your lordship in proceeding to comment upon the action of the respective belligerents as if there was a semblance of similarity between them.

So far as the United States are shown to be involved in censure, it is simply by the purchase and export of arms and munitions of war from a neutral; an act which your lordship expressly points out eminent authority to my attention to prove implies no censurable act on either party. While, on the other hand, it is American insurgents who find British allies to build in this kingdom, and to equip and send forth war-ships to depredate on the commerce of a friendly nation, and it is British subjects who load multitudes of British vessels with contraband of war as well as all other supplies, with the intent and aim to render null and void, so far as they can, a blockade legitimately made by a friendly nation, as well as to procrastinate and make successful a resistance in a war in which that nation is actually engaged. Surely this is a difference not unworthy of your lordship's deliberate observation.

But your lordship, in accounting for the admitted failure to enforce the enlistment law in Great Britain, has done me the honor to remind me that not long since Her Majesty's government was itself so far made sensible of injuries of the same kind with those of which I now complain, either inflicted or threatened against Great Britain in the ports of the United States, as to have made them the subject of remonstrance through Her Majesty's representative at Washington. With so fresh a sense of these evils before your lordship, there will be no further cause of surprise at the earnestness with which I have followed the precedent then set. You do me the honor to recall the fact that the enlistment law of the United States, which preceded in its date of
[33] enactment that of *Great Britain, is almost identical with it.

And you further state that "the notorious evasion of its provisions during the late war waged by Great Britain and her allies against Russia," was the cause of the remonstrances to which I have already alluded. Your lordship further remarks that "Great Britain was then, as on other occasions, assured that every effort which the law would permit had been made to prevent such practices; that the United States Government could only proceed upon legal evidence, the law as to which is almost if not entirely the same as in this country, and that without such evidence no conviction could be procured."

In the earlier portion of your lordship's note you did me the favor to cite, as good authority, to me an extract of the message of the President of the United States of the 31st December, 1865, which went to show the extent to which assistance not only had been, but might be, rendered without censure by neutrals to belligerents. Perhaps your lordship will not deny equal weight to the very next passage in that message, even though it should somewhat conflict with your own allegation:

> Whatever concern may have been felt by either of the belligerent powers lest private armed cruisers or other vessels in the service of one might be fitted out in the ports of this country to depredate on the property of the other, all such fears have proved to be utterly groundless. Our citizens have been withheld from any such act or purpose by good faith and by respect for the law.

I forbear from quoting the text any further, because it may revive unpleasant recollections in your lordship's as it does in my mind. I will content myself solely with the remark that the very last thing which your lordship would be likely to object to in the facts there stated would be the want of ability of the Government of the United States to proceed with energy and effect in the repression of acts in violation of their enlistment act.

But if evidence of another kind as to its energy under the law be needed, I have only to remind your lordship once more of the fact that on the 11th of October, 1855, Her Majesty's representative at Washing-

ton, Mr. Crampton, addressed to the Government of the United States a note with the evidence to show that a vessel called the Maury was then fitting out at the port of New York armed to depredate on British vessels. On the 12th the Attorney-General sent by telegraph to the proper officer at New York to consult with the British consul, and to prosecute if cause appear. On the 13th the collector stopped the vessel, then about to sail. On the 16th the district-attorney had prepared and filed a libel of the vessel, and in the mean time ordered a thorough examination of her cargo. On the 19th the marshal had made a full report of his examination. On the same day the complainant on whose evidence the minister and consul had acted, confessed himself satisfied, and requested the libel to be lifted. On the 23d Mr. Barclay, Her Majesty's consul at New York, published a note withdrawing every imputation made against the vessel. Thus it appears that in the brief space of four days the Government action under the enlistment law had been sufficiently energetic completely to satisfy the requisition of Her Majesty's representative. If any similar action have been had since the first day that I had the honor to call your lordship's attention to outfits of the same nature made in Great Britain, I can only say that I have not enjoyed a corresponding opportunity to express my satisfaction with the result.

The owners of the Maury were never compensated for the trouble and expense to which they were put by this process.

But the Chamber of Commerce of New York adopted a series of resolutions, two of which may serve as a sufficient comment on the remark which your lordship has been pleased to let fall touching the "notorious evasion" of the enlistment law in America at the time alluded to:

Resolved, That no proper amends or apologies have been made to A. A. Low & Brothers for the charge brought against them, which, if true, would have rendered them infamous; nor to the merchants of this city and country, so falsely and injuriously assailed.

Resolved, That the merchants of New York, as part of the body of merchants of the United States, will uphold the Government in the full maintenance of the neutrality laws of the country; and we acknowledge and adopt, and always have regarded the acts of the United States for preserving its neutrality, as binding in honor and conscience, as well as in law; and that we denounce those who violate them as disturbers of the peace of the world, to be held in universal abhorrence.

I pray your lordship to give one moment's attention to the manner in which the conduct imputed to Messrs. Low is stigmatized. I am sorry to confess that I have not seen the like indignation shown in this
[34] kingdom against similar charges made against distinguished *parties in Liverpool, nor yet can I perceive it so forcibly expressed as I had hoped even in the tone of your lordship's note.

I beg to assure your lordship that it gives me no pleasure to revive the recollections of the events of that period. But inasmuch as they have been voluntarily introduced in the note which I had the honor to receive, and they seemed to me necessarily to imply an unmerited charge against the policy of the United States, I felt myself imperatively called upon to show that at least in one instance in which Her Majesty's government made a complaint there was no failure either in the manner of construing the powers vested in the Government of the United States, or in their promptness of action under the enlistment law.

I pray, &c.,

(Signed) CHARLES FRANCIS ADAMS.

[Inclosure 1 in No. 17.]

List of vessels, from the United States consul at Liverpool, which have either sailed from Great Britain and Ireland since the 1st of August last, or are now in course of preparation to sail, with contraband of war, for the purpose of breaking the blockade of the rebel ports.

Steamers.—Bahama, from Liverpool, on the 13th of August, with men and cannon; Bonita, (late the Economist,) Gipsy Queen, Iona, Cornubia, Pearl, Eagle, Kelpie, Ruby, Giraffe, Florida, Antona, Juno, Calypso, Thistle, Havelock, Northumbria, Nicolai I, Douglas, Britannia, Julia Usher, (late Annie Childs,) Stanley, Royal Bride, Albion, Douro, Denbigh, Beacon, Pet, Georgiana, Neptune, Prince Albert, Sheldrake, Leipsic.

Sailing-vessels.—Ellen, Agrippina, (sailed from Cardiff 10th October with shot, shell, and coal; this is the vessel that carried arms and coal from London to No. 290 at Terceira; see depositions of Redden and King,) Severn, Queen of the Usk, Digby, Clarence, Mary Francis, Chatham, Peep o' Day, Speculator, Monmouth, Intrinsic.

[Inclosure 2 in No. 17.]

Mr. Morse to Mr. Adams.

UNITED STATES CONSULATE,
London, December 24, 1862.

SIR: In compliance with your request I herewith forward a list comprising most of such steamers and sailing-vessels as are known to have left the port of London laden with supplies for the insurgents now in rebellion against the United States.

I do not pretend that all the vessels which have left this port in the confederate service are known to me, but believe the following list of vessels can be relied on as being a part of those which have left with supplies, principally contraband of war, with the intention of either running the blockade directly, or of going to a neighboring Atlantic or Gulf port, and there discharging their cargoes into another class of vessels, the more easily to get such cargoes to their places of destination.

[35] *Vessels known to have left London.*

Name.	Tonnage.[1]	Time of departure.	Laden by.
		1861.	
Gladiator, screw-steamer	481	.....	
		1862.	
Economist, screw-steamer	338	Jan. 9	
Southwick, screw-steamer	467	Jan. 24	
Minna, screw-steamer	615	Feb. 28	
Phœbe, screw-steamer	416	April 23	
Lloyd's, screw-steamer	743	April 23	W. S. Lindsay & Co.
Merrimac, side-wheel	537	April 12	
Pacific, side-wheel	932	Feb. 22	
Melita, side-wheel	853	April 29	
Ann, side-wheel	200	April 29	
Harriet, screw-steamer	571	July 29	
Justitia, screw-steamer	616	Oct. 20	
		1861.	
Reschid, screw-steamer	.....	December.	W. S. Lindsay & Co.
Avies, sailing-vessel	217	.....	
Flora, screw-steamer	.....	December.	W. S. Lindsay & Co.
Princess Royal, screw-steamer	.....	December.	W. S. Lindsay & Co.
Memphis, screw-steamer	.....	.....	
Minho, screw-steamer	.....	.....	
Wave Queen, screw-steamer	.....	.....	
Peterhoff, screw-steamer	.....	.....	Now loading for Matamoras.
Melita, screw-steamer	853	.....	Now loading for Havana.
Springbok, sailing-vessel	.....	.....	

The screw-steamer Fingal left Greenock in the summer of 1861. Her cargo was sent there to her by steamer Colletis from London.

Vessels which have left ports on the east coast of England, and which may not have been reported by any other consul: Steamships Circassian, Modern Greece, Stettin,

[1] The tonnage given is the net tonnage or carrying space of the vessel, the space taken up by the machinery, &c., being deducted.

Bahama, and Bermuda, from Hartlepool: Hero, Patras, Labuan, Sidney, Hull, and Tubal Cain, all screw-steamers, and brig Stephen Hart.

During the last six or eight weeks there have been great exertions made in this country to procure good, fast steamers, and to forward them, laden with supplies, for the insurgents to the ports of the rebel States, or to ports adjacent to the coast of those States. Many of the boats in this service have been purchased on the river Clyde. Three new ones destined for the same service have recently been launched there, and have not yet gone to sea. They have been named Emma, Gertrude, and Louisiana, and several more are building there.

The ownership of these steamers, the cargoes they carry out, and the manner of conducting the trade, is a question of much interest to Americans. During the early stages of the war the trade was carried on principally by agents sent over from the Confederate States, aided by a few mercantile houses and active sympathizers in this country. These agents, with their friends here, purchased the supplies, and procured steamers, mostly by charter, and forwarded the goods.

But by far the largest portion of the trade, with, perhaps, the exception of that in small-arms, is now, and for a long time has been, under the management and control of British merchants. It is carried on principally by British capital, in British ships, and crosses the Atlantic under the protection of the British flag.

Parties came from Richmond with contracts made with the rebel government, by which they are to receive a very large percentage above the cost in confederate ports of the articles specified. British merchants became interested in these contracts, and participate in their profits or loss. I have seen the particulars of one such contract drawn out in detail, and have heard of others.

There are good reasons for believing that a large portion of the supplies more recently sent to the aid of the insurgents has been sent by merchants on their own account. Several will join together to charter a steamer, and make up a cargo independent of all contractors, each investing as much in the enterprise as he may deem expedient, according to his zeal in the rebel cause, or his hope of realizing profits from the speculation. Again, some one will put up a steamer to carry cargo to a rebel port at an enormous rate of freight, or to ports on the Atlantic or Gulf coast, such as Bermuda, Nassau, Havana, Matamoras, &c., at a less freight, to be from thence
[36] reshipped to such southern ports as appear to afford the best *opportunities for gaining an entrance. Ships bound on these voyages are of course not advertised or their destination made known to the public. Their cargoes are made up of individual shipments on account and risk of the shippers, or go into a joint stock concern on account and risk of the company, each member thereof realizing profit or suffering loss in proportion to the amount he invested in the adventure. Both steamers and cargoes are often, if not generally, insured in England, "to go to America, with liberty to run the blockade."

Some individuals and mercantile firms appear to have entered into the business of supplying the rebels with the means of carrying on and prolonging the war, with great zeal and energy on their own account. Mr. Z. C. Pearson, of Hull, has been largely interested in this contraband trade, but appears not to have been very fortunate in its pursuit, for he has had several valuable steamers taken by our blockading squadrons; and in addition to this bad luck, appears to have received in payment for the goods he did get in a kind of paper or payment that could not be made available here.

Of the firms which are the most largely engaged in this mode of rendering aid to and sustaining the rebellion, Fraser, Trenholm & Co., of Liverpool, and the firm of W. S. Lindsay & Co., of London, are among the most prominent.

The foregoing list of vessels, steam and sailing, was taken from memoranda. Had my other duties allowed me time to examine my dispatches for the last year and a half, I could no doubt add others to the last, and give you some interesting particulars concerning many of them. But for want of that time I am obliged to submit it, imperfect as I fear it is.

I am, &c.,
(Signed) F. H. MORSE.

No. 18.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, January 5, 1863. (Received January 6.)

MY LORD: I have the honor to transmit to your lordship copies of certain papers having relation to the depredations committed by the

vessel called No. 290, which I am instructed by my Government to submit to the consideration of Her Majesty's government.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[Inclosure 1 in No. 18.]

Memorials addressed to the United States Government by various ship-owners.

NEW BEDFORD, *November* 18, 1862.

His Excellency ABRAHAM LINCOLN, *President of the United States;*

SIR: I ask leave to present to you the accompanying memorial and papers from several of the ship-owners resident within this collection district whose vessels have been plundered and burned upon the high seas by the pirate steamer called the Alabama. And I respectfully and earnestly ask the immediate and decided action of our Government to the end that fair indemnity may be obtained and such safety of the seas secured to the loyal citizens of our Union that their lawful business may be done securely upon the ocean. From the facts set forth in the memorial, it would appear that some steps should be taken at once to arrest the progress of that pirate, and to obtain such redress for our ship-owners as may be due to them, by the provisions of international law.

I am, &c.,
(Signed) THOS. D. ELIOT.

To the President of the United States:

The undersigned ship-owners, citizens of the United States, resident within the collection district of New Bedford, in their own behalf, and representing the interests of their co-owners, respectfully state that during the month of September last past, on the high seas, in the neighborhood of the Western Islands, a large number of American ships and vessels were boarded, plundered, and burned, and their officers and crews captured
[37] and *subjected to brutal treatment, by an armed vessel named the Alabama; that among the ships which, with their cargoes, were so destroyed, were the whale-ships Virginia, Benjamin Tucker, Elisha Dunbar, and Ocean Rover, owned by your memoralists; together with the whaling-schooner Altamaha, also owned in said district, and the whale-ship Ocmulgee, owned in the Edgartown district, next adjoining; that, in consequence of these gross outrages, they have suffered, by the ruin of their voyages and the defeat of their enterprises, great loss and damage beyond the value of their ships and cargoes; that the owners of the bark Virginia have been damnified in the sum of $124,574, composed of the following items, viz: value of bark and cost of outfits on day of sailing from New Bedford, August 26, 1862, $30,074; value of a fair cargo of sperm-oil, 2,000 barrels, at $1.50 per gallon, $94,500—total, $124,574; that the owners of the ship Benjamin Tucker have been damnified in the sum of $124,000, composed of the following items, viz: value of the ship and outfits on sailing from New Bedford, $29,500; value of 400 barrels of sperm-oil, burned with the ship, at $1.50 per gallon, $18,900; value of 1,600 barrels of sperm-oil to be taken to complete her voyage, at $1.50 per gallon, (the full capacity of said ship being about 2,800 barrels,) $75,600—total, $124,000; that the owners of the bark Elisha Dunbar have been damnified in the sum of $93,000, composed of the following items, viz: value of bark and outfits at time of sailing from New Bedford, August 25, 1862, $24,000; value of 65 barrels of sperm-oil, burned with the ship, at $1.50 per gallon, $3,000; value of 1,400 barrels of sperm-oil to be taken to complete her voyage, at $1.50 per gallon, $66,000—total, $93,000; that the owners of the ship Ocean Rover have been damnified in the sum of $104,000, composed of the following items, viz: value of bark and outfits as she sailed, $39,000; value of 750 barrels of sperm-oil, burned with the bark, at $1.50 per gallon, $35,400; value of 50 barrels of whale-oil burned with the bark, at 80 cents per gallon, $1,260; value of 600 barrels of sperm-oil to be taken to complete voyage, at $1.50 per gallon, $28,340—total, $104,000.

Your memorialists further represent that this armed cruiser was built and supplied with stores during the past summer at an English port; that her armament and English crew, designed for and received by her, were also shipped from an English port; that, at the time the aforesaid outrages were committed, she had not been at any other than an English port; that she carried no other than the English colors until her prizes were within her grasp, and which were then exchanged for the rebel flag of

the Southern States of this republic, excepting in the case of the capture of the aforenamed ship Oemulgee, when at no time did she show any other than the English colors; that it was notorious in England during the past summer that this vessel, as well as others, was in process of construction, and designed to prey upon the commerce of the United States.

All these facts your memorialists believe can be abundantly proved, and to that end they have caused certified copies of the protests, duly entered by the respective masters of said ships, to be appended hereto; and they pray to be permitted to furnish, in some other form, further testimony of the truth of their representations.

For these losses thus occasioned, your memorialists believe the English nation should be held responsible.

And your memorialists further represent that the whaling interest of the country is now in extreme peril; that about one-third of all the vessels in the whaling service of the United States is now exposed to similar piratical capture and destruction.

They do, therefore, earnestly pray that the Government of the United States will adopt such measures as will result in their indemnity from loss by reason of the outrages aforesaid; and they do further pray that such disposition be made of a portion of the naval force of the nation as will insure the safety of the seas.

And as in duty bound, will ever pray.

(Signed) WM. HATHAWAY, JR.,
Agent and Owner of the Bark Virginia.
CHARLES R. TUCKER & CO.,
Agents and Owners of Ship Benjamin Tucker.
W. & G. D. WATKINS,
Agents and Owners of Bark Elisha Dunbar.
JOSIAH HOLMES, JR., & BROTHERS,
Agents, and for Owners of the Bark Ocean Rover.

And the undersigned, managing owner of the whaling brig Altamaha, in the foregoing memorial named among the vessels owned in the district of New Bedford,
[38] which were destroyed by the Alabama, in his own behalf and for his co-owners, prays to be permitted to join in the foregoing memorial; and, appending hereto a certified copy of the protest of the master of said brig, states their loss as follows, viz: value of brig and outfits, $6,000; value of a fair cargo of sperm-oil, 200 barrels, at $1.50 per gallon, (the capacity of said brig being 400 barrels,) $9,450; total, $15,450.

(Signed) S. C. LUCE,
Agent and Owner of Brig Altamaha.

On the 17th day of September, in the year of our Lord 1862, personally appeared before me William Childs, late master of the American ship Benjamin Tucker. States that he sailed from New Bedford in the year 1861, bound on a whaling-voyage. Nothing occurred of any consequence until the 14th day of September of this present year; at 1 a. m. saw a sail standing to the southwest; at half past 1 fired a gun and tacked; ship headed for me, and when he got within 300 yards he fired another gun, which brought me to, then sent a boat on board and informed me that I was a prize to the Confederate States steamer Alabama; he told me to pick up my things, also the crew, and sent us on board of the said steamer. At 5 a. m. he took out about one and a half tons of tobacco and forty boxes of soap, and about 6 a. m. he set fire to the ship; kept me and all my crew in irons until the 16th of September at mid-day, then sent us adrift in our own boats at about ten miles northwest from this island of Flores, where we arrived at 4 p. m. at the port of Punta Delgada. Thus the deponent declares, and has desired me to take his protest, as he doth protest against the said confederate steamer Alabama for all losses, costs, and damages sustained by the burning of the aforesaid ship Benjamin Tucker, all which is solemnly sworn before me by the said William Childs. In witness whereof I have hereunto affixed my signature and seal of office at this port of Santa Cruz, island of Flores, this 17th day of September, 1862.

(Signed) WILLIAM CHILDS, *Master.*
THOMAS SANFORD, JR., *Mate.*
NELSON C. BORDEN, *Second Officer.*
HENRY T. DAVIS, *Third Officer.*

(Signed) JAMES MACKAY, JR.,
United States Consular Agent.

I, the undersigned, consul of the United States for the Azores, do hereby certify that William Childs, master of the late ship Benjamin Tucker, personally appeared before me, and, confirming the foregoing protest, desired further to protest against the captain of the confederate steamer Alabama, as also against all whom it doth or may concern,

for all losses, costs, and damages which have arisen, or may arise, in consequence of the burning of the said ship.

(Signed) WILLIAM CHILDS.
(Countersigned) CHAS. W. DABNEY.

On the 9th day of September, in the year of our Lord 1862, personally appeared before me James M. Clark, late master of the American bark Ocean Rover, of Mattapoisett. States that he sailed on the 26th day of May, 1859, bound on a whaling-voyage. Nothing of any consequence occurred until the 8th day of September of the present year, when off the island of Flores, the Confederate States steamer Alabama run down to us when we were becalmed and ordered me to haul down my colors, then lowered a boat and boarded me, saying I was a prize to the Confederate States steamer Alabama, desiring me to go on board of the above steamer with my papers, which I did; then he ordered me to return and pick up all my effects and the crew's baggage, excepting the nautical instruments, books, and charts, and to leave the ship and go on shore; we were then about ten miles off the island of Flores, where we arrived about 11 p. m. Thus the deponent declares, and has desired me to take his protest, as he doth protest against the said confederate steamer Alabama for all losses, costs, and damages sustained by the loss of the aforesaid bark Ocean Rover, all of which is solemnly sworn before me by the said James M. Clark.

In witness whereof I have hereunto affixed my signature and seal of office at this port of Santa Cruz, island of Flores, this 9th day of September, 1862.

(Signed) JAMES MACKAY, Jr.,
United States Consular Agent.
(Signed) JAMES M. CLARK, *Master.*
NELSON RHODEHOUSE, *First Mate.*
SAMUEL H. LANDERS, *Third Mate.*
MARSHALL KEITH, *Fourth Mate.*

[39] *I, the undersigned, consul of the United States for the Azores, do hereby certify that James M. Clark, master of the late bark Ocean River, personally appeared before me, and, confirming the foregoing protest, desired to further protest against the captain of the confederate steamer Alabama, as also against all whom it doth or may concern, for all losses, costs, and damages which have arisen, or may arise, in consequence of the burning of the said ship.

(Signed) JAMES M. CLARK.
(Countersigned) CHAS. W. DABNEY.

Be it remembered that, on this 20th day of October, A. D. 1862, before me, William W. Crapo, a notary public, duly commissioned and qualified, and residing in New Bedford, in the commonwealth of Massachusetts, personally appeared David R. Gifford, master of the American whaling-bark Elisha Dunbar, of said New Bedford, and John G. Morrison, mate of said bark, who did severally declare and protest the several matters and things hereinafter set forth, that is to say:

These appearers set sail from the port of New Bedford on the 25th day of August, A. D. 1862, in said bark Elisha Dunbar, bound on a whaling-voyage to the Atlantic and Indian Oceans. Nothing material occurred until the morning of the 18th September, 1862, when in latitude 39° 50′ north, longitude 35° 20′ west, with the wind from the southwest, and the bark holding east-southeast, saw a steamer on our port quarter standing to the northwest. Soon after we found that she had altered her course, and was steering for the bark; we made all sail to get out of her reach, and were going ten knots at the time, but the steamer was gaining under canvas alone. She soon came up with us, and fired a gun under our stern, with the Saint George cross flying at the time. Our colors were set, when she displayed the confederate flag; being near us, we hove to, and a boat with armed officers and a crew came alongside, and on coming on board stated to the master that our vessel was a prize to the confederate steamer Alabama, Captain Semmes. This was at 2 o'clock in the afternoon.

The master of the Elisha Dunbar was then ordered on board the steamer with his papers, and the crew were ordered to follow with a bag of clothing each. On going aboard of the steamer, her captain claimed our vessel as a prize, and said she would be burned. The master of the bark not having any clothing, he was allowed to return for a small amount of clothing. The officer of the steamer on board the bark asked Captain Gifford what he had come back for, and tried to prevent his coming on board. Captain Gifford told him he came after a few clothes, which he took, and then returned to the steamer. It was blowing very heavy at the time, and was very squally. Nothing was taken from the bark but the chronometer, sextant, charts, &c. The bark was then set fire to, and burned. This was about half past 3 o'clock in the afternoon. The vessel, with her whaling outfits for a voyage of forty months, together with about sixty-five barrels of sperm-oil on deck, which had been taken a few days previous, were consumed. The officers and crew of the Elisha Dunbar were put in irons.

The crew of the Alabama consisted of British subjects, being English and Irish, as were some of the petty officers. The officers and crew of the steamer numbered about 120, all told; of whom all belonged to Great Britain, except perhaps 25. These appearers remained on board the steamer Alabama until the 3d October, 1862, when they were transferred to the ship Emily Farnham, bound to Liverpool, on board of which vessel they remained until the 6th October, 1862, when they went on board of the brig Golden Lead, and arrived at New York the 16th October, 1862, and at New Bedford the 17th October, 1862.

And these appearers do further severally declare, before me the said notary, that when said bark left the said port of New Bedford, and up to the time of the seizure and burning aforesaid, she was tight, staunch, and seaworthy, and was well and sufficiently manned and appareled for her said intended voyage; that during the voyage aforesaid, and particularly on the said 18th day of September, they all did everything in their power to preserve said bark and cargo from loss, detriment, and damage.

Wherefore the said appearers did declare to protest, as by these presents they do solemnly protest, against the various perils of navigation, and all other causes whatsoever by which the aforesaid disaster has been occasioned, all of which happened as before stated, and not otherwise, and not in any manner through the inefficiency of said bark or her apparel or tackle, or from the neglect or inattention of the officers or crew, all of whom, on the contrary, did their duty to the best of their ability.

In testimony whereof I have caused the said appearers to sign these presents,
[40] and ^make solemn oath to the truth of the same: and I have hereunto set my hand and affixed my seal notarial, the day and year first above written.

(Signed) DAVID R. GIFFORD.
JOHN G. MORRISON.

(Signed) WM. W. CRAPO, *Notary Public.*

UNITED STATES OF AMERICA, COMMONWEALTH OF MASSACHUSETTS,
County of Bristol, City of New Bedford:

I, William W. Crapo, a notary public, duly commissioned and sworn, residing in said city, hereby certify that the foregoing document is a true and correct copy from my notarial record.

Given under my hand and notarial seal, this 10th day of November, 1862.

(Signed) WM. W. CRAPO, *Notary Public.*

Marine Protest.

UNITED STATES OF AMERICA, COMMONWEALTH OF MASSACHUSETTS,
City of New Bedford, ss.:

By this public instrument of declaration and protest, be it made known and manifest, that on the 17th day of October, in the year of our Lord 1862, before me the subscriber personally appeared Shadrach R. Tilton, master of the ship Virginia, of New Bedford, of the burden of about 346 tons, and noted with me in due form of law his protest, for the uses and purposes hereinafter mentioned. And now on this day, to-wit, the 30th day of October, in the year 1862, before me, William H. Taylor, a public notary, duly and by lawful authority admitted, commissioned, and sworn, residing and practicing in the city of New Bedford, and commonwealth aforesaid, comes the said Shadrach R. Tilton and requires me to extend the said protest, and together with him comes and appears Charles B. Hardenburg, mate, belonging to the aforesaid ship Virginia, both of whom being by me severally, duly, and solemnly sworn on the Holy Evangelists of Almighty God, voluntarily and freely depose and say that the said ship, laden with provisions, stores, and utensils for a whaling-voyage, being in every respect sea-worthy, and in all things fitted and provided for her intended voyage, sailed on the 26th day of August, 1862, from the port of New Bedford, bound on a whaling-voyage in the Atlantic and Pacific Oceans; that nothing material occurred until the 17th day of September, 1862, when in latitude 39° north, longitude 34° west, the ship heading east-northeast, and fine weather, discovered a sail four points on the weather bow, steering for us. When within four miles distant the stranger set the Saint George's Cross, which we answered with the American ensign, and backing our main-yard, supposing her to be an English man-of-war. When within a quarter of a mile she hauled down the English and set the confederate flag, and boarded us with an armed crew, claiming us as a prize to the confederate steamer Alabama, Captain Semmes, taking away my papers and ordering me on board the steamer. After arriving on board Captain Semmes asked me where I was from, and inquired if I had any late papers or any money. He then told his first lieutenant to go on board the Virginia with me and allow me a trunk and each man a bag of clothing, and then destroy the ship. On reaching the ship I was allowed but a short time to get a small trunk of clothing, and was then hurried back to the steamer, where I with my crew were put in irons, and the Virginia was set on fire and burned. I was on board the steamer seventeen days,

in irons, on deck, wet most of the time. On the 3d of October all the officers and crew of the Virginia, except these appearers, were transferred to ship Emily Farnham, with orders to go to England. These deponents were then transferred to the brig Golden Lead, in which vessel they sailed for New York, where they arrived on the 16th instant. And the said deponents on their oaths declare that the ship was at commencement of voyage aforesaid staunch and strong, and her cargo well and sufficiently stowed and her hatches properly closed and secured, and that during the said voyage they, together with the rest of the crew on board, used their utmost endeavors to preserve the said ship, and her cargo, tackle, and apparel, from damage or injury; and that any loss, damage, or injury which has arisen or accrued, or that may arise or be sustained in any way or manner whatever, is solely owing to the accidents and difficulties herein set forth and declared, and not to any negligence, want of skill, vigilance, or exertion, on the part of the deponents or any of the officers or men of the said ship.

(Signed) SHADRACH R. TILTON, *Master.*
CHALES B. HARDENBERG, *First Mate.*

[41] *Wherefore the said Shadrach R. Tilton, master and commander as aforesaid hath requested me to protest, and I, the said notary, at such his request, have protested, and, by these presents, do publicly and solemnly protest against all and every person and persons, whom it doth, shall, or may concern, and against all and singular the accidents, casualties, and circumstances already set forth in the foregoing declaration, on oath, for all manner of losses, costs, damages, charges, expenses, and injuries whatsoever, which the said ship and her cargo on board, and the freight by her earned or to be earned, or either of them, or any part thereof, have already sustained or may hereafter sustain, by reason or means of the foregoing premises.

Thus done and protested, in the city of New Bedford, this 30th day of October, in the year of our Lord 1862.

In testimony whereof I have hereunto set my hand and affixed my notarial seal.

(Signed) WILLIAM H. TAYLOR,
Notary Public.

CITY OF NEW BEDFORD, *Bristol, ss:*

I, William H. Taylor, a notary public in and for the said city and county, duly commissioned and sworn, dwelling in said city, do certify the foregoing to be a true and exact copy of an original protest on record in my office.

In testimony whereof I hereunto set my hand and notarial seal this 30th day of October, 1862.

(Signed) WM. H. TAYLOR,
Notary Public.

On the 17th day of September, in the year of our Lord 1862, personally appeared before me Rufus Gray, late master of the American brig Altamaha, of Seppican; states that he sailed from Seppican on the 14th of May, present year, bound on a whaling voyage to the Atlantic Ocean, and nothing occurred during the voyage until the 13th of September. At 9 a. m. saw a sail standing toward us; at 11 a. m. fired a gun and brought us to. She had English colors flying, afterward setting the Confederate States flag. Sent a boat-crew on board, and told me I was a prize to the Confederate States steamer Alabama. Sent me on board the said steamer with my papers; afterward desired me to go on board my own vessel and inform my officers and crew to pack up what effects they had, and return again in our own boats. About 5 o'clock p. m. we returned on board, and were all put in irons; they then destroyed the vessel by fire. On the 16th, about midday, we were set adrift in our boats about ten miles northwest of the island of Flores, where we arrived at 4 p. m. at the port of Ponta Delgado.

Thus the deponent declares, and has desired me to take his protest, as he doth protest against the said confederate steamer Alabama for all losses, costs, and damages sustained by the burning of the aforesaid brig Altamaha; all which is solemnly sworn before me by the said Rufus Gray.

In witness whereof I have hereunto affixed my signature and seal of office at this port of Santa Cruz, island of Flores, this 17th day of September, 1862.

(Signed) JAMES MACKAY, JR.,
United States Consular Agent.

(Signed) RUFUS GRAY,
Master.
JUDAH HATHAWAY,
First Mate.
JAMES BLANKINSHIP,
Second Mate.
DANIEL L. TINKHAM,
Third Mate.

I, the undersigned, consul of the United States for the Azores, do hereby certify that Rufus Gray, master of the late brig Altamaha, personally appeared before me, and, confirming the foregoing protest, desired further to protest against the captain of the confederate steamer Alabama, as also against all whom it doth or may concern, for all losses, costs, and damages which have arisen or may arise in consequence of the burning of the said brig.

(Signed) RUFUS GRAY.
(Countersigned) CHAS. W. DABNEY.

A meeting of the merchants and ship-owners of New Bedford, called for the purpose of taking action in reference to the recent destruction of whaling-vessels by the armed steamer Alabama, was held at the rooms of the Pacific Mutual Insurance Company, in New Bedford, on Thursday, the 6th day of November, 1862.

[42] The meeting was organized by the appointment of Captain Joseph C. Delano, as chairman, and William W. Crapo, as secretary.

The memorial addressed to the President of the United States, and signed by the owners of the whaling-vessels belonging to this district which had been captured, was read to the meeting. Remarks were made by various gentlemen present upon the character of the outrages committed by the Alabama, and urging the necessity of immediate measures, not only to secure indemnity for losses already sustained, but for the protection of the whaling interest against further like depredations.

The following resolutions were unanimously adopted:

"*Resolved*, That the merchants and ship-owners of New Bedford regard the recent destruction of property upon the ocean by the rebel steamer Alabama as a wanton outrage, and the treatment of the officers and crews of the captured ships as atrocious and brutal; that the conduct of this piratical vessel, in its nefarious occupation of pillage and destruction, in burning its ill-fated prizes, and thus luring into its toils the generous who seek to save life, deserves the condemnation and detestation of the civilized world as a crime against humanity which no war can justify, extenuate, or excuse.

"*Resolved*, That the memorial addressed to the President of the United States, and which has been read at this meeting, meets with our hearty approval; and that we earnestly trust that our Government will take such steps as will secure to our plundered citizens sure and speedy indemnity from the British government for the losses sustained by them in permitting, if not encouraging, this vessel to go forth from an English port, constructed, armed, and manned for her work of destruction against the commerce of the world.

"*Resolved*, That the magnitude of our whaling-fleet, the immense amount of property invested in the whaling business, the thousands of American citizens actively engaged in its prosecution upon the ocean, merit and demand some attention from the Government of the United States for the protection of their interests against the attacks of pirates and privateers; and we earnestly beseech the action of the Navy Department in this behalf. We are the more emboldened to urge our request in view of the large contributions we have made during the rebellion, in officers and men, for the Navy of the Union. While we are manning the naval squadrons with thousands of our seamen, who are doing efficient service for the country, we ask that those who are pursuing their peaceful though hazardous calling may be reasonably free from piratical depredations, by such a disposition of a sufficient portion of the naval force of the country as will insure the safety of the seas."

It was voted that the record of the proceedings of this meeting, with a copy of the resolutions certified by the chairman and secretary, be presented to the President of the United States with the memorial.

(Signed) J. C. DELANO, *Chairman*.
WM. W. CRAPO, *Secretary*.

NEW BEDFORD, *November* 27, 1862.

To the President of the United States:

SIR: I respectfully submit to you the petition of Abraham Osborn and others, owners of the whale-ship Ocmulgee, which was captured and burned with her outfit and cargo by the Alabama while sailing under English colors. These owners ask to join in the memorial which I had the honor to forward to you from other ship-owners whose property has been destroyed upon the ocean by this pirate steamer; and I inclose to you their papers in the hope that it may appear right to demand, and practicable to obtain, proper indemnity for such gross violation of our right upon the seas.

Very respectfully, &c.,
(Signed) THOMAS D. ELIOT.

To the President of the United States of America:

Respectfully represent the undersigned, owners of the whale-ship Ocmulgee, late of Edgartown, in the State of Massachusetts, recently captured and burned by the piratical vessel the Alabama, which vessel was under English colors, that they desire to join in the memorial recently addressed to your excellency by William Hathaway, Charles R. Tucker, and others, owners of the whale-ship Virginia, Benjamin Tucker, and other vessels also destroyed by said Alabama.

These petitioners annex a copy of the protest of the officers of the Ocmulgee, and ask opportunity to furnish other requisite proof.

Their ship, its voyage, enterprise, and cargo, has been destroyed, and they
[43] have *suffered damage to the amount of $179,072, in the manner following: cost of ship Ocmulgee, $12,000; cost of her outfits, $28,000; value of 9,607 gallons of sperm-oil on board, (at $1.75 per gallon,) $16,712.

Probable loss by the breaking up of the enterprise, of the voyage fitted for four years to the Arctic Ocean and elsewhere, on which it would be reasonable and right to anticipate the taking of 3,000 barrels of whale-oil at $23.62, equal to $60,860; 45,000 pounds of whalebone at $1, equal to $45,000; and 9,400 gallons of sperm-oil at $1.75, equal to $16,500; so that this further estimate of probable loss would be $122,360.

And they further represent that said ship was also furnished with a large quantity of merchandise for exchange with the Arctic Indians for whalebone, teeth, furs, &c., for which a reasonable yield would be $75,000, in addition to the above amounts.

And these petitioners respectfully ask that the prayer of the memorial aforesaid may be granted for the benefit of these petitioners, as well as of said memorialist. And they further represent that in said capture and burning the Alabama was under English colors only.

(Signed) ABRAHAM OSBORN,

NOVEMBER 24, 1862.

Agent and Managing Owner of Ship Ocmulgee.

UNITED STATES OF AMERICA, *State of Massachusetts, Duke's County, ss:*

By this public instrument of protest be it known and made manifest to all whom it doth or may concern that, on this 8th day of November, in the year of our Lord 1862, before me, Joseph P. Pease, a notary public, duly commissioned and sworn, residing at Edgartown, within and for the county aforesaid, personally came and appeared Abraham Osborn, junior, late master of the ship Ocmulgee, of Edgartown, and with him also came Joshua S. Waldron, late third mate, George Luce, late mate, and Ivory L. Smith, late a seaman on board said ship, who, being severally sworn, did declare, depose, and say that the said ship, being of the burthen of 459 tons or thereabouts, and being laden with casks, whaling utensils and apparatus, spare sails, rigging, spars, ship-stores and provisions for a voyage of forty-eight months in the whaling fishery, in Atlantic, Pacific, and Arctic Oceans, they the said appearers made sail and departed in and with said ship from the port of Edgartown for the purpose of prosecuting said voyage on the 2d day of July, in the year 1862.

That nothing material occurred until the 19th day of July aforesaid, when we captured a sperm whale, which made us 50 barrels of sperm-oil. On or about the 20th of said July we captured another which made us 115 barrels of sperm-oil.

On the 4th day of September following, a steamer passed under our lee; she was steering the same course as we were, and soon went out of sight, it being about 11 o'clock at night. September 5, 1862, being west-northwest of the Island of Pico, fifty miles distant therefrom, we saw sperm-whales. While engaged in chasing them saw a steamer approaching us from the south showing English colors. We succeeded in capturing a 140-barrel whale, which we took alongside. When the steamer was about one mile distant she fired a gun at or toward us. At 2 o'clock p. m. we were boarded by a boat from said steamer, the crew of which were all armed. The commander of the boat informed me I was a prize to the steamer Alabama; that I must take my papers and go on board the steamer; that I might take my fine clothes, and that the crew might each of them take a bag of clothing; and that he was about to burn the ship.

At 4 o'clock p. m. I went on board the steamer with my papers, she having the English flag still flying. I soon found myself on board the armed piratical steamer Alabama, Captain Semmes; by him I was informed that I was his prize; that he was going to burn the Ocmulgee and every other vessel bearing the American flag that he could catch. I remonstrated with him against burning the Ocmulgee, but to no purpose.

Remaining on board the steamer about ten minutes I went on board the ship, re-

moved some of my clothing, and the crew taking out some of theirs, we went all of us on board the steamer.

At dark the steamer's crew came on board with a boat loaded with stores and provisions, and a boat loaded with sails, cordage, &c., taken from the Ocmulgee. The steamer lay by the ship all night, no person being on board the ship. On the next day, to wit, September 6, at 10 o'clock a. m., the ship Ocmulgee was set on fire by a boat's crew from said pirate steamer Alabama, burnt and entirely destroyed, with everything on board.

[44] *The steamer then shaped her course for the island of Flores, and at 7 o'clock p. m., said island being about three miles distant, the captain of said steamer told me to take my crew in my boats, which had been preserved, and leave; this we did, and landed on that island at about 7 o'clock p. m. We remained on that island fourteen days waiting a passage to Fayal.

On the 20th day of September we arrived at Fayal, and remained about twenty days waiting a passage to Boston.

October 8th we left Fayal in the ship Azor, for Boston, where we arrived October 28, 1862.

That said Abraham Osborn, junior, did note for protest before the United States consular agent at Flores, immediately on his arrival there, to wit, on the 7th day of September, 1862.

And the said appearers did further severally declare, depose, and say, that the said ship at the time of her departure from Edgartown, as aforesaid, was in good condition, was well manned, and was in all and every respect provided and furnished with all things needful and necessary for the prosecution of said voyage; and that when taken, detained, and burned by the officers and crew of said piratical steamer Alabama, said ship, her officers, and crew were in the legitimate prosecution of the voyage upon which they sailed from Edgartown.

And the said appearers further say, that as all the loss, damage, and injury, which has already or may hereafter appear to have happened or accrued to the said ship, or her cargo, fixtures, and appurtenances, has been occasioned solely by the circumstances hereinbefore stated, and cannot nor ought not to be attributed to any insufficiency of the vessel, or default of him, this deponent, his officers, or crew, he therefore requires me, the said notary, to make his protest and this public act thereof, that the same may serve and be of full force and value as of right shall appertain.

And therefore the said Abraham Osborn, junior, doth protest, and I, the said notary, at his special instance and request, do by these presents publicly and solemnly protest against the aforesaid pirate steamer Alabama, *alias* No. 290, her officers, owners, and crew, and all persons interested therein, against all accidents and occurrences, and all loss or damage occasioned thereby; and against all governments and persons whom it doth, shall, or may concern, more especially against the government of Her Majesty, the Queen of Great Britain, under the flag of which nation said vessel or ship was captured and burnt; and against all and every accident, matter, and thing, had and met with, whereby or by means whereof said ship or her cargo, or both, have received, or hereafter shall appear to have suffered, injury or loss; for all losses, costs, charges, expenses, damages, and injury which the said ship, or the owner or owners of said ship, and her cargo, already have or may hereafter have to pay, sustain, incur, or be put into by or on account of the premises, or for which the insurer or insurers is or are liable to pay or to make contribution or average according to custom, or their respective contracts or obligations, and that no part of such losses and expenses already incurred, or hereafter to be incurred, do fall on him the said Abraham Osborn, junior, his officers or crew.

Thus done and protested in the town of Edgartown, State and county aforesaid, on the day and date first herein named.

(Signed) ABM. OSBORN, JR.
GEORGE LUCE.
JOSHUA S. WALDRON.
IVORY L. SMITH.

In testimony whereof I have caused the said applicants to sign these presents, and I, the said notary, have subscribed my name and caused my seal of office to be hereunto affixed, the day and year last aforesaid.

(Signed) JOSEPH T. PEASE, *Notary Public.*

UNITED STATES OF AMERICA, *State of Massachusetts, Duke's County, ss:*

I, Joseph Thaxter Pease, a notary public, within and for the State and county aforesaid, do hereby certify that the foregoing is a true and correct copy of the protest of Abraham Osborn, junior, *et al.*, late master of ship Ocmulgee.

Given under my hand and seal of office this 8th day of November, A. D. 1862.

(Signed) JOSEPH T. PEASE, *Notary Public.*

[45] *No. 19.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *January* 24, 1863.

SIR: It is impossible for me to leave without notice some of the statements contained in your letter of the 30th ultimo.

These statements contain or imply a grave charge against Her Majesty's government. You speak of the "admitted fact of a violation of a statute of this kingdom intended to prevent ill-disposed persons from involving it in difficulty, by committing wanton and injurious assaults upon foreign nations with which it is at peace, of which Her Majesty's ministers are invited to take cognizance; of which they do take cognizance, so far as to prepare measures of prevention; but which, by reason of circumstances, wholly within their own control, they do not prevent in season to save the justly complaining party from serious injury. On the substantial points of the case, little room seems left open for discussion."

On the substantial points of the case, as stated by you, there is, on the contrary, great room left open for discussion.

I must ask first, what are the circumstances within the control of the government to which you allude? Do you mean that Her Majesty's government in construing a penal statute, or in carrying into effect the provisions of a penal statute, were to hurry at once to a decision, and to seize a ship building and fitting out at Liverpool without being satisfied by evidence that the provisions of the foreign-enlistment act had been violated in the case of such vessel? Do you mean that Her Majesty's government were to dispense with proof, and to inflict injury upon the Queen's subjects by seizing a ship upon your mere assertion that the owners of that ship were violating the law?

If such is your meaning, I must reply that the government of this country respect the law. They do not seize upon property to the loss and damage of its owners without proof that they are legally entitled to do so.

Perhaps your meaning is that Her Majesty's government should have proceeded on the opinion of Mr. Collier without waiting for other authority.

But, here again, I must reply that the usage of this country requires that the government should consult their own legal advisers, and obtain the opinion of the law-officers of the Crown before they proceed to enforce a penal statute.

If you mean to contend, therefore, that a nation in a state of profound peace should set aside the formalities of law, and act at once upon presumptions and surmises, I entirely differ from you. I may remind you that evidence sufficient to satisfy a court of law as to the "equipment" or "fitting out" of a vessel for warlike purposes, and of its actual destination, is not obtainable without difficulty.

If you mean that Her Majesty's government willfully delayed or neglected the measures by which the character of the Alabama could have been legally ascertained, I must give a positive and complete denial of the truth of any such assertion. The opinion of the law officers, until the receipt of which Her Majesty's government could not act, was delivered at the foreign office on the 29th of July, but in the morning of that day the Alabama, under pretext of a pleasure excursion, escaped from Liverpool.

With regard to the very different circumstances of 1793 and 1794,

those circumstances are recorded in history. It is notorious that M. Genet, the French minister to the United States, fitted out privateers in the ports of the United States, that he boasted in his dispatches of the captures of British vessels which those privateers had made, and that he procured a sham condemnation of those vessels captured in neutral ports. It is notorious also that he endeavored to make the United States the basis of his operations and attempts to raise rebellions against England in Canada, and against Spain in Louisiana.[1]

According to your own account the United States purposely delayed to give any redress to the complaints made by the British government of the captures of British merchant-vessels, because they felt unwilling to act on a policy of repression till they had given due notice of the construction they put upon a treaty offensive and defensive with France, which had been quoted in defense of the depredations committed on British commerce.

It is evident that by so acting the United States Government deliberately made themselves parties in the interval to the proceedings carried on in their own ports, and the same Government, with the sense of justice which distinguished them, made compensation afterward for the injuries inflicted under cover and protection of their own flag, and promised to exclude French privateers "from all further asylum in their ports."[2]

[46] * In Mr. Jefferson's letter, quoted by you, he says: "Having for particular reasons forborne to use all the means in our power for the restitution," &c. Here is the injury stated, and here are the grounds why it was permitted.

But the British government have given no asylum to belligerent privateers bringing prizes into British ports. They have no particular reasons to allege. They have not forborne to use all the means in their power. They have used all the means they could use consistently with the law of the land; and, by no fault of theirs, those means, in a single instance, proved inefficacious. There was no want of a statute to enforce, nor of a will to enforce it; evidence was wanting, and an authority to decide upon that evidence, till it was too late. But Her Majesty's government cannot promise the United States to act without evidence, nor to disregard the legal authority of their own law-officers.

As to other points we are nearly agreed, so far as the law of nations is concerned. But with respect to the statement in your letter that large supplies of various kinds have been sent from this country by private speculators for the use of the confederates, I have to observe that that statement is only a repetition in detail of a part of the assertion made in my previous letter of the 19th ultimo, that both parties in the civil war have, to the extent of their wants and means, induced British subjects to violate the Queen's proclamation of the 13th of May, 1861, which forbids her subjects from affording such supplies to either party.

It is no doubt true that a neutral may furnish, as a matter of trade, supplies of arms and warlike stores impartially to both belligerents in a war, and it was not on the ground that such acts were at variance with the law of nations that the remark was made in the former note. But the Queen having issued a proclamation forbidding her subjects to afford such supplies to either party in the civil war, Her Majesty's government are entitled to complain of both parties for having induced

[1] See, besides the usual authorities, "Jefferson and the American Democracy," by M. De Witt. Appendix 8.

[2] See dispatch of the President to Mr. Hammond, September 5, 1793.

Her Majesty's subjects to violate that proclamation; and their complaint applies most to the Government of the United States, because it is by that Government that by far the greatest amount of such supplies have been ordered and procured.

I do not propose to discuss other collateral topics which have been introduced, but in explanation of my former letter I must say that I never meant to accuse you of giving any encouragement to the enlistment of British subjects in this country to serve in the civil war unhappily prevailing in the United States.

But it is notorious that large bounties have been offered and given to British subjects residing in the United States to engage in the war on the Federal side; and these British subjects, acting in defiance of the laws of their country and of the Queen's proclamation, have been encouraged by the United States Government so to act.

A recent and striking example of the open avowal of this course of conduct on the part of the United States Government is to be found in the correspondence between Mr. Seward and Mr. Stuart with reference to the crew of the Sunbeam, in which, although it does not appear that any bounties were offered, Mr. Seward has treated an endeavor to induce British sailors to enlist in the belligerent service of the United States as affording no ground of complaint to Her Majesty's Government.

I am, &c.,
(Signed) RUSSELL.

No. 20.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, January 26, 1863. (Received January 27.)

MY LORD: I have the honor to acknowledge the reception of your lordship's note of the 24th instant, in reply to some portions of mine of the 30th of last month, respecting the case of the outfit from Liverpool of gun-boat No. 290 to depredate on the commerce of the United States.

Your lordship is pleased to raise a discussion on the following statement made by me. I quote the paragraph as it stands in your note:

> The admitted fact of a violation of a statute of this kingdom intended to prevent ill-disposed persons from involving it in difficulty, by committting wanton and injurious assaults upon foreign nations with which it is at peace, of which Her Majesty's ministers are invited [by a party injured] to take cognizance; of which they do take cognizance so far as to prepare measures of prevention; but which, by reason of circumstances wholly within their own control, they do not prevent in season to save the justly complaining party from serious injury. On the substantial points of the case, little room seems left open for discussion.

[47] *Out of my profound respect for your lordship's representation, I have reviewed the whole of this paragraph with the utmost care. I am compelled now to confess that I can perceive no ambiguity in the meaning sufficient to justify any of the implications which your lordship appears to desire to raise from it. Starting from a point of moral obligation, in my view as strong between nations as it is between individuals, that injuries inflicted on an innocent party, of which, if not prevented, it has a right to complain, provided that it give notice in time seasonable for the application of adequate means of prevention, should be so far as practicable repaired or compensated for by the party that does the wrong, or suffers it to be done by persons under its control, I have applied the general principle to the case before me. The

fact that warning had been given in full season to prevent the departure of No. 290 does not depend upon my statement, inasmuch as it is simply a question of dates open to the inspection of all men. The fact that Her Majesty's government were convinced of the justice of the representation made, is patent from the determination to which your lordship admits that they ultimately came to detain the vessel. The fact that this decision was so long delayed as to fail in effecting the object intended, whereby great injury has been actually done, and is yet likely to ensue to the commerce of the United States, is equally a question purely of dates. Inasmuch as these constitute the substance of the paragraph of my note to which exception is taken, I must confess myself wholly at a loss to perceive upon what ground any doubt can further be raised about it.

But your lordship proceeds to do me the honor to address a series of questions to me as to the possible meaning that may be conveyed in my language, which might imply, from the failure to act of Her Majesty's government, motives of some kind or other that I have not distinctly expressed. I must respectfully ask to be excused from entering into any such field of controversy. I desire neither to make charges nor to raise implications of an unnecessary nature to complicate the difficulties of this painful subject. All that I deem it my duty to know is that a grievous wrong has been done to an innocent and friendly nation, by what seems to me to have been a most unfortunate delay in effecting a prevention that later experience conclusively shows ought to have been applied in time. Of the reasons that prevented such an application, inasmuch as none of them could have grown out of the course of the injured party, I have no wish to enter into a discussion. The principle of justice is not merely that right should be done, but that it should be sufficiently prompt to effect its object. Otherwise it is justice denied. Upon that I am content to rely.

As it is probable that I may receive at an early moment further instructions from my Government in respect to the substantial point involved in the present correspondence, I deem it unadvisable further to take up your lordship's time by enlarging the limits of the discussion of purely incidental questions. I desire to express my obligation to you for the ready and full manner in which your lordship has exonerated me from the suspicion of encouraging the enlistment of Her Majesty's subjects in the service of the United States. At the same time it is not without regret that I perceive the charge still persevered in against the Government of the United States. If I understand your lordship aright, it is now affirmed that because the Government offers large bounties on enlistment in the United States, and because British subjects in the United States, tempted by these bounties, do occasionally enlist, therefore your lordship is justified in having affirmed, in your former note, that the Government of the United States, systematically and in disregard of the comity of nations, induced them to enlist. As well might I, in my turn, in view of the frequent applications made to me to procure the discharge of citizens of the United States who have been tempted in the same manner to enlist in Her Majesty's service in this kingdom, assume the existence of a similar policy. Further than the presence of a general offer I do not perceive that your lordship's reference to the action of Mr. Seward, of which I am not in a situation to speak authoritatively, appears to extend. Further than this, I must still continue to disclaim the belief in the existence of any systematic policy, as well in the one case as in the other.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[48] * No. 21.

Earl Russell to Lord Lyons.

[Extract.]

FOREIGN OFFICE, *January* 28, 1863.

I have to state to your lordship that I lately received from Mr. Adams some papers respecting the proceedings of the Alabama, which Mr. Adams informed me he had been instructed to submit for the consideration of Her Majesty's government.

These papers contain accounts of the various captures made by the Alabama, but they do not appear to Her Majesty's government to affect in any way the principles of international law applicable to that ship, upon which the answers of Her Majesty's government to the demands of the United States Government in this case have been framed. Some of the memorialists pray that the United States Government will so order their naval force as to prevent the captures made by the Alabama. That is undoubtedly the remedy for the evil of which the memorialists complain, but it is, of course, one with which Her Majesty's government have no concern.

There is also an allegation that the crew of the Alabama are partly, or mainly, composed of British subjects. If this be so, these persons are acting in violation of the Queen's proclamation, and of the foreign-enlistment act; but, unfortunately, in accordance with the principles upon this subject maintained by Mr. Seward, in his note to your lordship in the case of the Sunbeam. [1]

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[1] *Mr. Seward to Mr. Stuart.*

DEPARTMENT OF STATE,
Washington, November 12, 1862.

SIR: I have the honor to acknowledge the receipt of your note of the 9th instant, which relates to the case of certain seamen captured on board the British steamer Sunbeam, in her attempt to violate the blockade.

Those seamen, in the protest which accompanied your note, say, that while they were in this city, friendless and penniless, every inducement was held out to them by Acting Master and ex-officer Rogers, of the United States cruiser Georgia, to join the American Navy or the military forces of the United States, which inducements they strenuously opposed, preferring rather protection, and, if unavoidable, privations, under the British flag.

Upon this statement you request me to cause instructions to be issued to prevent the exercise of any similar pressure upon British subjects who may be captured for any alleged intention to violate the blockade.

Having taken the President's instructions upon the subject, I have now to reply that the case, as presented by the seamen, does not seem to me to warrant the complaint that a pressure of any kind was made upon the seamen of the Sunbeam. The term "every inducement" is, indeed, very vague; but it certainly does not comprehend duress, force, menace, intimidation, bribery, falsehood, or even deceitful propositions. The seamen are understood to have been free men without occupation, except the unlawful and forbidden one which had just then failed them. They were needy, and it seems to me that they could well have complained of severity and harshness if, being disposed, they had been refused permission to enter into the service of the United States.

I avail, &c.,
(Signed) WILLIAM H. SEWARD.

No. 22.

Earl Russell to Lord Lyons.

FOREIGN OFFICE, *February* 14, 1863.

MY LORD: I had a conversation a few days ago with Mr. Adams on the subject of the Alabama.

It did not appear that his Government desired to carry on the controversy on this subject from Washington; they rather left the conduct of the argument to Mr. Adams.

On a second point, however, namely, whether the law with respect to equipment of vessels for hostile purposes might be improved, Mr. Adams said that his Government were ready to listen to any propositions Her Majesty's government had to make, but they did not see how their own law on this subject could be improved.

I said that the Cabinet had come to a similar conclusion; so that no further proceedings need be taken at present on this subject.

I am, &c.,
(Signed) RUSSELL.

NORTH AMERICA. No. 1. (1864.)

CORRESPONDENCE RESPECTING THE ALABAMA.

(IN CONTINUATION OF CORRESPONDENCE PRESENTED TO PARLIAMENT IN MARCH, 1863.)

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CORRESPONDENCE RESPECTING THE ALABAMA.

No. 1.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, February 19, 1863. (Received February 21.)

MY LORD: At the request of my government, I have the honor to submit to your lordship's consideration a copy of a memorial addressed to the Secretary of State by an association of underwriters in New York.

Renewing, &c.,

(Signed) CHARLES FRANCIS ADAMS.

[Inclosure in No. 1.]

Memorial.

Your memorialists, representing the New York Mutual Insurance Company, of the city of New York, respectively submit to the Department of State of the United States the following facts, viz:

That the said New York Mutual Insurance Company had certain policies of insurance upon the following vessels: ship Brilliant, $9,245; ship Manchester, $7,500; and the said vessels, in the prosecution of their lawful voyages, were arrested on the high seas by a steamer called the Alabama, and by her boarded and burned, and the New York Mutual Insurance Company have paid the policies of insurance on the above-named vessels in consequence of said destruction; and your memorialists are of opinion that the said steamer having been built at, fitted out, and sailed from, a port in Great Britain, and her crew being composed principally of the subjects of the government of Great Britain, she is to all intents and purposes a British vessel.

And your memorialists therefore claim from the government of Great Britain the repayment to them of the above amounts with interest accruing thereon, and respectfully request the United States Government to make the necessary claim on their behalf.

(Signed) JOHN H. EARLE,
President.

(Signed) W. P. HANSFORD,
Secretary.

NEW YORK, *January* 31, 1863.

No. 2.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *March* 9, 1863.

SIR: I have the honor to acquaint you that Her Majesty's government have had under their consideration your letter of the 19th ultimo, inclosing a copy of a memorial which has been addressed to the United States Secretary of State by the New York Mutual Insurance Company,

claiming the repayment by Her Majesty's government of certain
[2] *policies of insurance upon the United States vessels Brilliant and Manchester, which have been destroyed on the high seas by the confederate steam-vessel Alabama.

I have now the honor to state to you that Her Majesty's Government entirely disclaim all responsibility for any acts of the Alabama, and they had hoped that they had already made this decision on their part plain to the Government of the United States.

I am, &c.,

(Signed) RUSSELL.

No. 3.

Earl Russell to Lord Lyons.

FOREIGN OFFICE, *March* 27, 1863.

MY LORD: Mr. Adams having asked for an interview, I had a long conversation with him yesterday at the foreign office.

He read me a dispatch of Mr. Seward on the subject of the Alabama and Oreto. In this dispatch, which was not unfriendly in its tone, Mr. Seward complains of the depredations on American commerce committed by vessels fitted out in British ports, and manned, for the most part, by British sailors. He alludes to the strong feeling excited in the United States by the destruction of her trading vessels and their cargoes. He repeats the complaint common in America, that England is at war with the United States, while the United States were not at war with England. He expresses his hope that Great Britain, in execution of her own laws, will put an end to the fitting out of such vessels to prey on the commerce of a friendly nation.

I said that the phrase that England was at war with America, but America was not at war with England, was rather a figure of rhetoric than a true description of facts. That the facts were that two vessels, the Oreto and the Alabama, had eluded the operation of the foreign-enlistment act, and had, against the will and purpose of the British government, made war upon American commerce in the American seas. That the fitting out of the Alabama, the operation against which the foreign-enlistment act was specially directed, was carried on in Portuguese waters at a great distance from any British port. That the most stringent orders had been given long ago to watch the proceedings of those who might be suspected of fitting out vessels of war for confederate purposes. That if there were six vessels, as it was alleged, fitting out in British ports for such purposes, let evidence be forthcoming, and the government would not hesitate to stop the vessels, and to bring the offenders before a court of justice. That Mr. Adams was no doubt aware that the government must proceed according to the regular process of law and upon sworn testimony.

Mr. Adams, on the other hand, dwelt on the novelty and enormity of this species of warfare. He said that if a belligerent could fit out in the ports of a neutral swift armed vessels to prey upon the commerce of its adversary, the commerce of that belligerent must be destroyed, and a new and terrible element of warfare would be introduced. He was sure that England would not suffer such conduct on the part of France, nor France on the part of England. He should be sorry to see letters of

marque issued by the President; but there might be no better resource than such a measure.

I said I would at once suggest a better measure. Mr. Seward had said to Lord Lyons that the crews of privateers had this advantage—that they reaped the whole benefit of the prizes they took, whereas the crews of men-of-war were entitled to only half the value of the prizes they took. Let the President, I said, offer a higher reward for the capture of the Alabama and Oreto to the crews of men-of-war than even the entire value of those vessels. Let him offer double their value as a gratuity, and thus confine his action to officers and men of the United States Navy, over whom he could keep a control, and who were amenable to the laws which govern an honorable profession. But what could Mr. Adams ask of the British government? What was his proposal?

Mr. Adams said there was one thing which might be easily done. It was supposed the British government were indifferent to these notorious violations of their own laws. Let them declare their condemnation of all such infractions of law.

With respect to the law itself, Mr. Adams said either it was sufficient for the purposes of neutrality, and then let the British government enforce it; or it was insufficient, and then let the British government apply to Parliament to amend it.

I said that the Cabinet were of opinion that the law was sufficient, but that legal evidence could not always be procured; that the British government had done everything in its power to execute the law;
[3] but I admitted that the cases of the Alabama *and Oreto were a scandal, and in some degree a reproach to our laws. Still, I said, it was my belief that if all the assistance given to the Federals by British subjects, and British munitions of war were weighed against similar aid given to the confederates, the balance would be greatly in favor of the Federals.

Mr. Adams totally denied this proposition. But above all, he said, there is a manifest conspiracy in this country, of which the confederate loan is an additional proof, to produce a state of exasperation in America, and thus bring on a war with Great Britain with a view to aid the confederate cause, and secure a monopoly of the trade of the Southern States, whose independence these conspirators hope to establish by these illegal and unjust measures. He had worked to the best of his power for peace, but it had become a most difficult task.

Mr. Adams fully deserves the character of having always labored for peace between our two nations, nor, I trust, will his efforts and those of the two governments fail of success.

I am, &c.,
(Signed) RUSSELL.

No. 4.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, April 4, 1863. (Received April 4.)

MY LORD: I have the honor to submit to your consideration the copy of an affidavit voluntarily made by Clarence R. Yonge, being in the nature of accumulative evidence to show the execution of a deliberate plan to establish within the limits of this kingdom a system of

action in direct hostility to the Government of the United States. This appears to corroborate in all essential particulars the evidence heretofore adduced from other quarters.

I append the copy of a paper, marked A, showing the extent to which Her Majesty's subjects, many of them alleged to belong to the naval reserve, have been enlisted in a single example of illegal enterprise.

I pray, &c.,

[Signed] CHARLES FRANCIS ADAMS.

Inclosure in No. 4.

Affidavit of Clarence Randolph Yonge.

I, Clarence Randolph Yonge, citizen of the State of Georgia, in the United States, late paymaster on board the steamer Alabama, formerly called the 290, and also called the Enrica, and which was built by Messrs. Laird, at Birkenhead, in England, make oath and say as follows:

I came to England in the steamer Annie Childs, which sailed from Wilmington, in North Carolina, early in February, 1862, and landed in England on or about the 11th of March, 1862, and remained at Liverpool until the steamer Alabama went to sea. I came over for the express purpose of acting as paymaster to the Alabama. I engaged for that purpose with Captain James D. Bullock, at Savannah, Georgia. He had full authority from the confederate government in the matters about to be mentioned. Lieutenant North had been sent over to England by the confederate government to get two iron-clad vessels built. Captain Bullock had been over previously, and had made the contracts for building the Oreto and the Alabama, and was returning to England to assume the command of the latter ship. He was directed at the time to assist Lieutenant North with his advice and experience in building the iron-clads, which Lieutenant North had been sent over here expressly to get built. I was in the naval paymaster's office in Savannah, Georgia, under the confederate government. Captain Bullock wanted some one to accompany him, and I was recommended by the paymaster at Savannah to Captain Bullock. I was then released by the paymaster from my engagement, and was subsequently appointed by Captain Bullock, under the written authority of Mr. S. R. Mallory, the secretary of the navy, a paymaster in the confederate navy, and assigned to the Alabama. I continued as paymaster in the navy of the Confederate States of America from the time of my appointment in Savannah, Georgia, up to the time of my leaving the Alabama at Port Royal, in January, 1863.

[4] The date of my appointment as paymaster in the confederate navy was the 21st of December, 1861. Previous to this time I had attended to Captain Bullock's correspondence with the confederate government, and I therefore knew that these two vessels, afterward called the Oreto and Alabama, were being built in England for the confederate government, and by the same means I knew that Captain Bullock, who is a commander in the confederate navy, was the acknowledged agent of the confederate government for the purpose of getting said ships built. There was some correspondence which I saw between Captain Bullock and Mr. S. R. Mallory, the secretary of the navy, relative to purchasing two English vessels which had been used as transports in the Crimean war, Captain Bullock advising against purchasing them as being unfit for the service for which they were required. I wrote the letters from Captain Bullock (and which he signed) to the secretary advising against this purchase. There was correspondence between Mr. Mallory and Captain Bullock (which I saw and copied) to the effect that the money would be ready and lodged in England to pay for these vessels as it fell due. From what I know I am satisfied that the money was all duly paid as it fell due for those vessels. I saw a letter from Captain Bullock to Fraser, Trenholm & Co. (a firm in Liverpool hereinafter again referred to) thanking them. Captain Bullock kept copies of his correspondence, and they are deposited in one of the banks in Savannah.

From the time of my coming to England until I sailed in the Alabama my principal business was in paying the officers of the confederate navy, who were over here attached to the Alabama, and sent over for that purpose. I used to pay them monthly, about the 1st of the month, at Fraser, Trenholm & Co.'s office in Liverpool, and I drew the money for that purpose from that firm.

Commander James D. Bullock, John Low, lieutenant, Eugene Maffitt, midshipman, F. M. Anderson, midshipman, came over to England in the same vessel with myself. Captain Bullock came over to England, in the first instance, to contract for building the two vessels, the Oreto, now called the Florida, and the Alabama. He came

to contract for and in behalf of the southern confederacy, with the understanding that he was to have the command of one of the vessels. I have heard this and I have learned this also from the correspondence between him and Mr. Mallory, secretary of the confederate navy, as before mentioned, which passed through my hands.

At the commencement of my engagement with Captain Bulloch I acted as his clerk. The contract for building the Alabama was made with Messrs. Laird, of Birkenhead, by Captain Bulloch. I have seen it myself. I made a copy from the original. The copy was in the ship. It was signed by Captain Bulloch, on the one part, and Messrs. Laird, on the other. I made the copy at instance of Captain Bulloch from the original, which he has. The ship cost, in United States money, about $220,000; the outfitting provisions, &c., enough for a voyage to the East Indies, which Messrs. Laird were to do contract to provide. The payments were all made before the vessel sailed, to the best of my belief. Fraser, Hamilton & Co., of London, had money. Fraser, Trenholm & Co., of Liverpool, had money. There was government money to help. Laird hands must have enough for the purpose of paying them. I was not to be on the steamer before she was launched from Messrs. Laird's yard, and was to board the vessel with Captain Bulloch, and have met Captain Bulloch and one of the Messrs. Laird's partners, Trenholm & Co.'s office. Captain Bulloch superintended the building of the Alabama and Oreto; also while he was here Captain Matthew J. Butcher was the engineer who came here to me. He is an Englishman, and represented himself as belonging to the royal naval reserve. At the time the Alabama was being built by Messrs. Laird, and when I saw them at different times at their yard in Birkenhead and at Fraser, Trenholm & Co.'s office, I have not the slightest doubt that they perfectly well knew that such steamer was being built for the southern confederacy, and that she was to be used in war against the Government of the United States. When she cleared out from Liverpool she had her port-marks filled in the usual manner, she had anchors in her decks, and the pins fitted which held her bower anchors for carriage for the purposes and mounting boats. These had been placed in by the engineers of the yard, Messrs. Laird & Co. She was also full of provisions and stores enough for three months' cruise. When she sailed she had sails, bending, running-rigging, and stores on board for 100 men, and, as other tenders found her.

We sailed from Liverpool on the 29th day of July, 1862. This is as near dates as four days more than we expected to sail. The reason for our sailing at that time before we contemplated, was on account of information which we had received that proceedings were being instituted in the United States courts. Captain Bulloch sent Lieutenant Low to me on Sunday evening, the 27th of July, to say that I must be at Fraser, Trenholm & Co.'s office early next morning. The next morning I met him at [5] half past 9 o'clock. Captain Bulloch came in and told me [illegible] that time was settled by the [illegible] and his sailing and he wanted me to go with him. In a few minutes Captain Bulloch came in and told me he wanted me to go on as a volunteer; that they were going to make [illegible] not. I placed my things on the vessel on that evening. There were altogether, or eight men in the vessel on the first night. Captain Butcher, who had been in command of the vessel for more than a month before she sailed.

I went on the vessel on the morning of the 29th of July for the purpose of sailing. We started out of the river Mersey at about half past 10 o'clock. Captain Bulloch commanded; Mr. Low acted as first officer, Captain T. Wilkes, second officer, and Lieut. Herbert Llewellyn as assistant officer.

Captain Bulloch, Lieutenant Low and myself were on board, also the two Messrs. Laird. Mr. A. H. Dyas, one of our clerks, [illegible] was [illegible] were some other gentlemen whom I do not know. When we sailed it was intended to return, but it was with the intention of going to sea, but we proceeded up to the Isle The Italian [illegible] passengers were taken on board as a blind.

After we got on board, one of the Messrs. Laird in the party [illegible] gave me a [illegible] in English gold. Captain Bulloch came and asked me if the Laird had given me the money; [illegible] he had come to give me [illegible] I [illegible] on the table. I told him I had not [illegible] and went to Mr. Laird and got it. Mr. Laird counted it out to me, and I gave him a receipt for the amount. Mr. Laird gave me a number of bills and receipts in my name, [illegible] the last three [illegible] the two vessels —bills, [illegible] Liverpool, Messrs. Fraser, Trenholm & Co., all of which Mr. Laird had purchased from various parties on account of the ships. My understanding was that the money given me was for the [illegible] of the vessels [illegible] these receipts. The bills and receipts which Mr. Laird gave me were memoranda or vouchers of the purchases he had made, were left on the ships and were handed over by me to Captain Bulloch, who has accounted for and produced them.

There was a tug-boat in attendance when we left Liverpool on the 29th of July to which the pilots and the passengers left. We then proceeded down the Mersey [illegible] and lay there all that night and the next day and were [illegible] on Friday morning. I expect a letter of instructions from Captain Bulloch to Captain

Butcher, in which Captain Butcher was directed to proceed to Porto Praya in Terceira, one of the Azores, where it was intended that we should go to receive the armament. I knew, and all the officers knew, before we went on board that this vessel had been built for the purpose, and was to go out with the intention of cruising and making war against the government and people of the United States. This, as I verily believe, was well known by the Messrs. Laird, who built her and helped to fit her out, and by Fraser, Trenholm & Co., and by A. E. Byrne, of Liverpool, who also assisted in fitting her out, and by Captain Butcher and the other officers who sailed in her.

The next day after we left, the tug-boat Hercules came to us from Liverpool about 3 o'clock. She brought to us Captain Bullock and S. G. Porter, (who for a time superintended the fitting of the vessel,) and some two or three men. The men signed articles that night. They had signed articles before at various times while in Liverpool, but they all came up again and renewed the articles. The advance-notes had been given them in Liverpool by Captain Butcher, and made payable at Cunard, Wilson & Co. The original articles are now in Fraser, Trenholm & Co.'s office, but in possession of Captain Bullock, who transacts all his business and keeps all his papers at Fraser, Trenholm & Co. I do not know the name of the man who acted as shipping-master at Liverpool. Captain Bullock wrote a letter of instructions to me before we left Liverpool, directing me to circulate freely among the men, and induce them to go on the vessel after we got to Terceira. I accordingly did circulate among the men on our way out, and persuaded them to join the vessel after we should get to Terceira. Low did the same.

We sailed from Moelfra Bay at 3 o'clock on Friday morning. We went out through the Irish Channel. Captain Bullock left us at the Giant's Causeway. We were some ten or eleven days going out to Terceira. We were in quarantine three days at Porto Praya. There was no transfer of the vessel or anything of the kind there. The bark Agrippina, from London, arrived there with a part of the armament and all the ammunition, all the clothing and coals. She was commanded by Alexander McQueen. The first day after the arrival of the bark she was getting ready for discharging. This bark is owned by the confederate government, but is nominally held by Sinclair, Hamilton & Co., of London, and sails under the British flag. This firm are connected with the confederate government.

[6] *Early the following day the bark Agrippina hauled alongside, and we commenced to take the guns on board. Two or three days after this the Bahama arrived with the officers. This steamer was in command of Captain Tessier. She also sailed under the British flag. The Bahama came in, and Captain Butcher went on board, and received orders to sail to Angra. The Bahama took the bark in tow, and we all went round to Angra. After we got there we were ordered away by the authorities. There was also correspondence took place between Captain Butcher and the British consul at that place, but I never heard what it was. We went out, and continued discharging and taking in all that day, and at night we and the bark ran into the bay, the Bahama keeping outside. By this time we had got all the guns, ammunition, and cargo from the steamer and bark. During all this time the three vessels were sailing under the British flag. We finished coaling on Sunday, the 24th day of August, about 1 o'clock. We received from the bark Agrippina four broadside guns, each 32-pounders, and two pivot-guns, one 68-pounder solid-shot gun, and one 100-pounder rifled gun; 100 barrels of gunpowder, a number of Enfield rifles, two cases of pistols and cartridges for the same. All the clothing for the men was also received from the Agrippina, and the fuses, primers, signals, rockets, shot, shell, and other munitions of war needed by the ship; also a quantity of coal. We received from the Bahama two 32-pounder broadside guns, a bale of blue flannel for sailors' wear, and a fire-proof chest with $50,000 in English sovereigns and $50,000 in bank-bills.

Captain Butcher or Mr. Low, the first mate, told me that Mr. M. G. Klingender had been directed to purchase in Liverpool, where Mr. Klingender resides and does business as a merchant, such supplies of tobacco and liquor as were required for the ship's use. I made out the advance notes for the men at Liverpool on the 28th of July, 1862, while she was lying in the Birkenhead docks, which advance-notes were made payable by Cunard, Wilson & Co., at Liverpool; the half-pay notes which I made out in Moelfra Bay on board the No. 290 were made payable at Liverpool by the aforesaid Mr. M. G. Klingender. After we arrived at Angra, and had armed the ship, and were leaving that port to enter upon the cruise, we were still under the British flag. Captain Semmes then had all the men called aft on the quarter-deck. The British flag was hauled down and the confederate one raised. He then and there made a speech; read his commission to them as a commander in the confederate navy; told them the objects of the vessel, and what she was about to do; mentioned to them what their proportion of prize-money would be out of each $100,000 worth of property captured and destroyed; said he had on board $100,000; and asked them to go with him, at the same time appealing to them as British sailors to aid him in defending the side of the weak.

I had two sets of articles prepared; one for men shipping for a limited time, the

other for those willing to go during the war. The articles were then re-signed, while the vessel was in Portuguese waters, but under the confederate flag. This was on Sunday, the 24th of August, 1862. At the same time Captain Semmes announced that the ship would be called the Confederate States vessel Alabama. The guns which were brought out to the No. 290 in the Agrippina and the Bahama were made and furnished by Fawcett, Preston & Co., of Liverpool. The ammunition and entire armament of the vessel, as well as all the outfit, were purchased in England.

The list hereunto annexed, marked A, contains a list of the names of all the officers on the Alabama when I left, except myself, and of all the men whom I can now remember. My belief is that we had eighty-four shipped men, inclusive of the firemen and coal-trimmers, when we left Angra. All the men but three signed the articles for the period of the war. The half-pay notes were then drawn in favor of and given to the men. These half-pay notes entitled their families or friends to draw half of their pay on the 1st of every month. They were all payable by Fraser, Trenholm & Co., with whom the money for the purpose of meeting them was lodged. The first set of notes (payable at Cunard, Wilson & Co.'s) were in the form of the British marine service; the second set (payable at Fraser, Trenholm & Co.'s) were in the form used by the United States and confederate navy. Several of the men refused to sign, and returned in the Bahama to Liverpool. Captain Butcher and Captain Bullock also returned in the Bahama. We then entered upon our cruise.

Out of the eighty-four men I believe there were not more than ten or twelve Americans. There was one Spaniard, and all the rest were Englishmen. More than one-half of the Englishmen belonged to the royal navy reserve, as they informed me, and as was generally understood by all on board. Four at least of the officers were English; that is to say, John Low, fourth lieutenant; David Herbert Llewellyn, assistant surgeon; George T. Fullam, master's mate; and Henry Allcott, the sail-maker. I never remember at any time seeing any custom-house officer aboard this vessel. I re-
[7] mained aboard the *vessel as paymaster from the time I joined her, as before stated, until the 25th day of January, 1863, at which time she was lying at Port Royal, Jamaica. During the whole time that I was on board her she was cruising and making war against the Government and people of the United States. I cannot recollect the names of all the vessels which she captured, but I know that the number which were captured and destroyed up to the time I left her was at least twenty-three, and, as I believe, was more. Of these twenty-three, four were released upon giving ransom-bonds payable to the confederate government: such four were, the ship Emily Farnham, of New York, bound to Liverpool; the Tonawanda, of Philadelphia, bound for Liverpool; the brig Baron de Custine, bound for the West Indies; and the mail-steamship Ariel, on the Californian line. All the rest were burned or destroyed.

The first port we went into after leaving the Western Islands was Port Royal, Martinique, where we went to provision and coal. The bark Agrippina was lying with coals for us, being the same vessel as took out the armament. We did not provision or coal there, but we went out, and afterward met the Agrippina at the island of Blanco, belonging to Venezuela. We only took coal in there. We then proceeded to the Arcas Keys, near Yucatan Banks, where we lay about ten days; where we painted the ship and re-coaled from the Agrippina, and gave the men a run on shore.

We then steered for Galveston, where we destroyed the United States gun-boat Hatteras, which was the last vessel we destroyed before I left her.

As soon as we got the prisoners from the Hatteras on board we started straight for Jamaica, (Port Royal.) There we provisioned, coaled, and repaired ship. All the twenty-three ships which we had burned or destroyed had been so burned or destroyed in the interval between our leaving the Western Islands and steering for Port Royal. I heard of no objection from the authorities in Jamaica to our repairing, coaling, or provisioning the ship in Port Royal; but, on the contrary, we were received with all courtesy and kindness. We were there about a week. While we were there the English admiral at Port Royal paid a visit to Captain Semmes on board the Alabama. I was on shore on duty at the time of the visit, but I heard of such visit immediately upon my return to the ship, for it was the subject of much conversation and remark among the officers; and, in particular, I remember Mr. Sinclair, the master, speaking of it. I also know that Captain Semmes paid a return visit to the English admiral on the day that the Alabama left Port Royal; I myself saw him start for the purpose. My connection with the ship terminated in Port Royal, and I subsequently came to England, where I arrived on the 22d of March, 1863.

(Signed) CLARENCE R. YONGE.

Sworn at the judge's chambers, Rolls Gardens, Chancery Lane, this 2d day of April, 1863, before me,

(Signed) JOHN PAYNE,
A Commissioner, &c.

A.—*Officers and crew of the Alabama.*

Raphael Semmes, commander.
J. M. Kell, first lieutenant.
Richard F. Armstrong, second lieutenant.
Joseph Wilson, third lieutenant.
John Low, fourth lieutenant; Englishman; sisters living in Liverpool; made his allotment payable to brother-in-law, Charles Green, jr. Fraser, Trenholm & Co. pay the men all the allotments; that is, the half-monthly pay. Every month they drew this allotment.
Arthur Sinclair, master; that is, sailing-master.
Francis L. Galt, surgeon; from Virginia; now acting as paymaster.
Miles J. Freeman, first assistant engineer; ranks as chief; born in Wales; does not know whether naturalized.
David Herbert Llewellyn, assistant surgeon; Englishman.
B. K. Howell, (brother-in-law of Jeff. Davis,) lieutenant of marines—no marines on board.
William H. Sinclair, midshipmen.
Irvine S. Bullock, midshipman; Captain Bullock's brother.
Eugene Maffitt, midshipman; Captain Maffitt's son.
Edward Maffitt Anderson, midshipman; son of Colonel Anderson.
William P. Brooks, second assistant engineer.
S. W. Cummings, third assistant engineer.
Matthew O'Brien, third assistant engineer.
[8] *John M. Pundt, third assistant engineer.
George T. Fullam, first master's mate; Englishman; father teacher of navigation school in hull.
James Evans, second master's mate; Charleston pilot.
William B. Smith, captain's clerk.
Benjamin L. Mecasky, boatswain.
T. C. Cuddy, gunner.
William Robinson, carpenter.
Henry Allcott, sail-maker; Englishman.

Petty officers and seamen.

James King, master-at-arms; Savannah pilot.
Adolphus Marmelstein, signal quartermaster; Savannah pilot.
Wm. A. King, quartermaster; Savannah pilot.
James G. Dent, quartermaster; Savannah pilot.
Wm. Forestall, quartermaster; Savannah pilot.
Ralph Masters, quarter-gunner.
Wm. Crawford, quarter-gunner, royal naval reserve; England.
George Addison, armorer.
Wm. Rinton, carpenter's mate; Englishman.
Edward Rawes, ship's carpenter; Englishman.
George Harwood, chief boatswain's mate, English reserve; English government pay him a pension; time up February 24, 1863, (as he states.)
Michael Genshla, fireman; has a pension in England; has been discharged November 25, 1862; Irishman.
Brent Johnson, second boatswain's mate; English reserve.
Wm. Pundy, sail-maker's mate; English.
John Latham, fireman; English.
David Roach, fireman; English.
Thomas Murphy, fireman; English.
John McAlee, ordinary seaman; English.
Thos. Welsh, ordinary seaman; English.
James Smith, captain of the forecastle; English.
Edwd. Fitzsmorris, ordinary seaman; English.
George Egerton, fireman, lives at Liverpool; English.
James McFaden, fireman; time up February, 1863; English.
Wm. Robinson, able seaman; English.
Martin Molk, able seaman; English.
Geo. Yeoman, ordinary seaman; English.
Wm. McGinley, able seaman; English.
George Freemantle, able seaman; English.
Frederick Johns, purser's steward; English.
John Grady, boy; uncle lives at 56 Regent street, Liverpool, bootmaker; English.
Thos. Weir, gunner's mate; English.
James Brasner, able seaman; English.

Edgar Fripp, seaman; English.
John Neil, seaman, English.
Joseph Neil, seaman; English.
Samuel Henry, seaman; English.
John Roberts, seaman; English.
John Duggan, seaman; English.
Martin King, seaman; English.
F. Williams, seaman; English.
R. Williams, seaman; English.
Joseph Pearson, seaman; English.
Joseph Connor, seaman; English.
Thos. McMillan, seaman; English.
Michael Mars, seaman; English.
Robert Egan, boy; English.
Malcolm McFarlane, seaman; English.
Peter Henry, seaman; English.
Charles Godwin, seaman; American.
James Higgs, captain of hold; English.
Peter Duncan, fireman; English.
Richard Parkinson Ward, purser's steward; English.
George Appleby, yeoman; English.
John Enwry, seaman; English.
Wm. Heam, seaman; English.
Thos. L. Parker, boy; English.
A. G. Bartelli, captain's steward; American.
Peter Hughes, seaman; American.
Henry Fisher, seaman, belonging to reserve; English.
Frank Townsend, seaman, belonging to reserve; English.
Frank Cunen, seaman, belonging to reserve; English.
William Levins, coal-trimmer; English.

There are now several men on board of the Alabama who have joined the ship since we entered upon the cruise, some of whom are Americans.

(Signed) CLARENCE R. YONGE.

This is the list marked A referred to in the affidavit of Clarence Randolph Yonge, sworn this 2d day of April, 1863, before me.

(Signed) JOHN PAYNE,
A Commissioner, &c.

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[9] *No. 5.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, April 29, 1863. (Received April 30.)

MY LORD: I am directed by the Government of the United States to submit to your consideration a copy of a memorial addressed to the President by the directing authorities of the Panama Railroad Company. I am further instructed to say that this case is regarded as coming within the category described in my note to your lordship of the 20th of November last, touching the depredations committed by gun-boat No. 290, now known as the Alabama, but attended by some peculiar circumstances fully set forth in the memorial itself.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[Inclosure 1 in No. 5.]

The president and secretary of the Panama Railroad Company to the President of the United States.

OFFICE OF THE PANAMA RAILROAD COMPANY,
New York, March 14, 1863.

SIR: The undersigned, president and secretary of the Panama Railroad Company, beg leave to make the following statements:

1. That the American bark Golden Rule, of the registered tonnage of 254$\frac{19}{95}$ tons, hereinafter mentioned, was the property of said Panama Railroad Company and others.

2. That the said bark, while on her voyage from the port of New York to the port of Aspinwall, or Colon, in New Granada, was captured on the 26th day of January last by the steamer Alabama, of the so-called Confederate States of America, in about 75° west longitude, and 18° north latitude, and after the removal of a portion of her cargo to the Alabama, was totally destroyed by burning, together with the residue of her cargo remaining on board.

3. That the value of the bark Golden Rule, with her freight, was $16,090, and that of the cargo she had on board the Panama Railroad Company was owner to the amount of $1,406.

4. That the aforesaid steamer Alabama was built in England, and sailed from a British port after notice had been given Her Majesty's government that she was intended to be employed in the service of the so-called Confederate States of America as a vessel of war, to operate against the commerce of the United States.

5. That the destruction of the bark Golden Rule by the steamer Alabama took place within twenty-four hours after the departure of the Alabama from Port Royal, in the island of Jamaica, a colonial port of Great Britain, where she had been permitted to remain during the whole of the preceding five days, for the purpose of repairing, refitting, coaling, and provisioning.

6. That the cargo on board the Golden Rule was owned to a great extent by neutral parties of various nationalities, among whom are British subjects, and that the citizens of Great Britain are largely interested in the Panama Railroad Company, both as owners of the sterling bonds and of the shares of the company.

In view of the foregoing facts the undersigned consider the government of Great Britain to be justly bound to make good to the Panama Railroad Company and others the loss sustained by the destruction of the bark Golden Rule, and of the cargo on board belonging to said company, say to the aggregate amount of $17,406, and they respectfully request your excellency to take such measures to obtain redress as in your judgment may seem best.

(Signed) DAVID HOADLEY, *President.*
JAS. F. JOY, *Secretary.*

[Inclosure 2 in No. 5.]

Memorial.

NEW YORK, *March* 14, 1863.

The undersigned, citizens of the United States, being duly sworn, depose and say:

That they were master and first officer of the American bark Golden Rule,
[19] belonging to the Panama Railroad Company and others, on her late voyage from the port of New York to Aspinwall, or Colon, in New Granada; that on the 26th day of January last, while becalmed near the longitude of 75° west, and latitude 18° north, the said bark was captured by the steamer Alabama, of the so-called Confederate States of America, commanded by Captain Semmes; that on going on board the Alabama the commander was informed that the cargo of the Golden Rule was owned in part by neutral parties, probably to the extent of one-fourth or one-third; that after the removal of a portion of the cargo to the Alabama the bark was set on fire, by order of the commander of the Alabama, and totally destroyed, together with the cargo remaining on board.

(Signed) P. H. WHITEBURN,
Master, Golden Rule.
JOHN CASSIDY,
Officer, Golden Rule.

STATE OF NEW YORK, *City and County of New York, ss:*

Be it known that on the 14th day of March, A. D. 1863, before me, Frederick Bull, a notary public in and for the State of New York, duly commissioned and sworn, dwell-

ing in the city of New York, personally came David Hoadley, president, and Joseph F. Joy, secretary, of the Panama Railroad Company, and P. H. Whitehurn, master, and John Cassidy, first officer, of the American bark Golden Rule, to me known, who, being severally sworn, did each for himself depose and say that the foregoing statements by them respectively subscribed are correct and true, to the best of their knowledge and belief.

In witness whereof I have hereunto set my hand and affixed my notarial seal, the day and year last before written.

(Signed) FREDERICK BULL,
Notary Public, 58 Wall Street.

No. 6.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *April* 30, 1863.

SIR: I have the honor to acknowledge the receipt of your letter of the 29th instant, inclosing a memorial addressed to the President of the United States by the directing authorities of the Panama Railroad Company, respecting the destruction by the Alabama of the American bark Golden Rule.

I am, &c.,
(Signed) RUSSELL.

No. 7.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, July 7, 1863. (Received July 8.)

MY LORD: As constituting one of the claims of the United States growing out of the lawless depredations upon American commerce by vessels fitted out and sent from the ports of Great Britain, I am directed to transmit to your lordship copies of the papers herewith submitted, (inclosures 1 and 2.)

I have the honor at the same time to annex copies of two other depositions furnished to me from the consul of the United States at Liverpool, relating to the same general subjects, (inclosures 3 and 4.)

It is with great regret that I feel myself once more compelled to call your lordship's attention to the circumstance attending the outfit of the steamer called the Japan. It now appears that that vessel was, at the time of her escape, and has continued until very lately to be, the property of a British subject residing in Liverpool. That person is Mr. Thomas Bold, a member of the commercial house of Jones & Co. I have information which leads me to believe that only within a few days has Mr. Bold notified the collector of customs at Liverpool of his sale of this vessel to foreign owners, and requested the register to be canceled. That act was not completed until the 23d of June last. It would appear from these facts, should they prove to be true, that this vessel has remained the property of a British subject during a considerable time in which she has been engaged in committing extensive ravages upon the commerce of a nation with which Her Majesty is at peace. The fact of the outfit of that vessel for hostile purposes has already occupied the attention of your lordship, in consequence of former representations unhappily

made too late for effective interposition. But the circumstances
[11] of the retention of the *ownership by a British subject for so long a period after she was known to be engaged in hostilities against the United States, is of too grave a character to justify me in omitting to call your lordship's particular attention to it in advance of the possibility of receiving instructions respecting it.

I pray, &c.,

(Signed) CHARLES FRANCIS ADAMS.

[Inclosure 1 in No. 7.]

Messrs. Robinson, Howard, and McGaw to Mr. Seward.

NEW YORK, *June* 4, 1863.

SIR: The undersigned, owners of the ship Golden Eagle, and her freight, beg to state that, on the 21st of February last, that vessel was captured and burned by the steamer Alabama, a vessel built in an English port, the particulars of which are fully set forth in the notarial copy of the protest of her master herewith, and to which we beg your attention.

The value of the vessel was	$36,000
Freight, £3,600 sterling, at 67½ per cent	26,800
Our loss	62,800

Believing we have a good and valid claim against the British government for this loss, we have to ask your kind offices in the premises, and would feel obliged if you will take such steps as will best protect our interests, and we remain, &c.,

(Signed) EDWIN H. ROBINSON.
H. L. HOWARD,
Executrix of B. Howard's Estate.
JOHN H. McGAW.

[Inclosure 2 in No. 7.]

Protest.

CONSULATE OF THE UNITED STATES OF AMERICA, *London.*

To all whom it may concern, be it known and made manifest, that on this 24th day of March, in the year of our Lord 1863, before me, Freeman H. Morse, consul of the United States of America for London and the dependencies thereof, personally appeared Edward A. Swift, master and commander of the ship Golden Eagle, of New Bedford, United States aforesaid, of the burden of 1,120⅞ tons or thereabouts. And the said Edward A. Swift having before, on the 20th day of March, within twenty-four hours after his arrival, declared to protest before me, John Britton, United States consul at Southampton; now comes, being desirous to extend the same before me, and with him come Carl Brown, second officer; John Smith, carpenter; John Smith, A. Gates, Thomas Parker, E. Hubbard, W. Gibson, M. Gilford, A. Silvé, J. Francis, John Leons, T. Whiskey, Merritt D. Bradley, W. L. Cartons, H. Dodson, and George Burrill, seamen, being duly sworn on the Holy Evangelists of Almighty God, before me the said consul, did declare and set forth as follows, that is to say: That they the said appearers and the said ship's company sailed in and with the said ship from the port of Howland's Island on the 23d of November now last past, with a cargo of guano bound to the port of Cork for orders, the said ship being tight, staunch, and strong, and in all respects in good order, and well fitted for the said voyage.

That nothing material occurred until the 21st February, on which day, at 10 a. m., being then in latitude 29° 17′ north, and longitude 45° 15′ west, on the starboard tack, by the wind, saw a sail on the port bow standing toward us. At 11 a. m. spoke the bark Olive Jane of Boston for New York. At 11.30 a. m. made the sail on the port bow to be a gun-boat and a steamer by her smoke-pipe, distance about six miles, (which proved to be the pirate-steamer Alabama.) Soon after she fired two blank shots, having the confederate flag at her peak, and tacking ship as ourselves, the wind being very light at the time and the ship going about four miles an hour, the steamer soon took in

sail and steamed down upon us, firing a shot which fell short of the ship. About 1.15 p. m. the steamer fired again, the shot passing close ahead of the ship. At 1.30 p. m., finding they were preparing to fire again, appearers brought the ship to. An armed boat's crew boarded and took possession. At 6 p. m., the Alabama having chased another vessel, (the bark Olive Jane,) and set fire to her, returned to the
[12] ship. Appearer Swift was ordered on board with the ship's papers. Captain Semmes giving orders to the first lieutenant to plunder and burn the ship, they taking all the ship's papers, chronometer, two sextants, spy-glasses, charts, books, log-book, and all appearer Swift's private property with the exception of a small quantity of clothes, and allowing the appearers, the officers and crew, a small bag of clothes each, and, upon arrival on the Alabama, they were placed in irons on deck all the time, with the exception of said appearer Swift, who was taken below and searched, and the little money, about $157, taken away from him, he being allowed to mess and sleep in the steerage with the petty officers. At 5 p. m. the Golden Eagle was set fire to, and at 8 a. m. on the 22d went down, the steamer remaining by the burning ship all night. On the 27th the Alabama gave chase to the ship Washington, bound from Callao to Antwerp, and, after boarding her and finding her cargo owned by foreigners, took bonds for her, and put appearers and other persons upon her. Appearers remained six days on the Alabama.

On the 18th of March the Washington spoke Cowes pilot-boat No. 3 off the Isle of Wight, south-southwest, and placed appearers and other sufferers on board, and they made for Cowes, where they arrived and were put on shore.

Now, therefore, be it known that they, the said appearers, have protested, and by these presents do protest, against the said pirate No. 290, *alias* the Alabama, commanded by Captain Semmes, her officers and crew, as the sole cause of all losses, costs, and damages that the said ship Golden Eagle, or her cargo, have suffered, or may suffer by reason thereof.

(Signed) EDWARD A. SWIFT, *Master.*
CARL BROWN, *Second Officer.*
JOHN SMITH, *Carpenter.*
THOM. SMITH.
ANDREW GATES.
THOS P. PARKER.
ELISHA HUBBARD.
WILLIAM GIBSON.
MATTHEW GILFORD.
ANTONIO SILVÉ.
HENRY DODSON.

(Signed) JOHN FRANCIS.
JOHN LEON,
THOM. WHISKEY.
JOHN WILLIAMS.
CHARLEY BROWNE.
CRUZ CALLOHA.
JAMES BADGER.
ISAAC DE MERRITT.
DAVID BRADLEY.
WM. L. CURTIONS.
GEORGE BURRILL.

In testimony of all which I, the said consul, have hereunto set my hand and affixed my seal of office in London, the day and year first herein mentioned, and in the eighty-seventh year of the Independence of the said United States.

(Signed) F. H. MORSE.

CONSULATE OF THE UNITED STATES OF AMERICA, *London.*

I, Freeman H. Morse, consul to the United States of America for London and the dependencies thereof, do hereby certify to all to whom it may concern, that the foregoing is a true and faithful copy of a certain instrument of protest of the ship Golden Eagle, of New Bedford, made and extended before me on the 24th day of March, and taken from the registry of the office of this consulate in book marked "Record Book of Protest No. 5," at folio 17.

In testimony whereof I have hereunto set my hand and affixed my seal of office at London, this 24th day of March, in the year of our Lord 1863, and in the eighty-seventh year of the Independence of the said United States.

(Signed) F. H. MORSE.

CITY AND COUNTY OF NEW YORK, *ss:*

I, Andrew Foster Higgins, a public notary in and for the said city and county, duly commissioned and sworn, do hereby certify the foregoing to be a true and exact copy of a certified copy of protest exhibited to me.

In testimony whereof I hereunto set my hand and seal of office this 2d day of June, A. D. 1863.

(Signed) A. F. HIGGINS,
Notary Public.

[Inclosure 3 in No. 7.]

Affidavit of John Trader.

I, John Trader, at present on board the bark Regatta, now lying in the Queen's dock, in Liverpool, in the county of Lancaster, seaman, make oath and say:

[13] On the 18th day of March last I joined at Baltimore the bark Henrietta, Captain Brown, master, as boy on a voyage from Baltimore to Rio, with a cargo of flour, and two gentlemen and one lady, with three children, as passengers.

We left Baltimore on the 20th of March, and proceeded on our voyage, and on the 23d of April, when about fifty-six miles south of the equator, we were becalmed, and about 4 o'clock in the afternoon we saw a strange vessel astern of us: she had all her sails furled, and appeared to be making toward us under steam, and between 5 and 6 o'clock she came up to us, and when about forty to fifty yards from us she hailed us and asked where we were bound to and where from. Our captain told him. The strange vessel was flying the American colors, the officer on board the strange vessel sang out to back our mainyard, and he would send some one on board. We backed the mainyard, and the stranger then sent off a boat which came alongside of us. An officer and several men then came on board; they were all armed with revolvers and swords: they told us to get ready to go on board of their vessel. All the seamen of the Henrietta, except myself, went into the boat, and were taken to the stranger. Another boat then came off from the stranger and took me, the two mates, and the steward, off to the ship. When we got on board the stranger we were put into irons, and remained on deck. We found some ten or twelve prisoners; they were all in irons. Another boat was sent from the stranger and fetched the captain and passengers, and they were brought on board, but they were not put in irons. Our mates were put into irons at first, but they were afterward taken off.

About one hour after we came on board the stranger we saw our ship was on fire, and I also noticed that the stranger was flying the southern colors, and that the American colors she had been flying when she hailed us had been hauled down, and about this time I had heard that the stranger was the Florida.

When the fire had got a good hold of the Henrietta, the Florida steamed away and then lay-to for the night.

On the following morning we got up steam and steamed down toward our vessel, which we passed: she was then nearly burnt down to the water's edge. After cruising about we saw a strange sail, and made for her. She was an English vessel bound, I think, for Liverpool. One of the officers of the Florida hailed her, and asked her master if he could take any passenger; he said yes, but he would want a barrel of bread and a barrel of beef to be put on board first for every one taken. We then steamed off and about 8 or 9 o'clock in the morning we saw another sail, and in about two or three hours we came up with her. She was hailed, and turned out to be an American ship called the Oneida, bound to New York from Shanghai with tea. The Florida was flying the American colors. The Oneida was ordered to lie-to, and a boat was sent off from the Florida to the Oneida with an armed crew. We were on deck and could see what took place. When the boat's crew had got on board the Oneida the Florida hoisted the southern flag, and the Oneida hauled down her American flag; the Florida's boats brought off the captain and crew of the Oneida. The crew were put into irons immediately they came on board. The Oneida was then set fire to. When the fire had got hold of the vessel we steamed away from her, and continued to cruise about. We then saw another sail, which we made for, and on coming up to her we found she was a French bark bound to New South Wales. She was hailed by one of the officers of the Florida, and told to back her mainyard. We could not make him understand. A boat was sent off to her, and Captain Brown, our captain, and one of our men, Peter Brown, who went as an interpreter, went on board. Our captain told us he was going to see if he could get a passage for all, himself and his crew and passengers. In about half an hour our captain returned and told us that the Frenchman would only take six, and the captain and the mates and the passengers and the captain of the Oneida went on board the Frenchman. The seaman Peter Brown also remained on board the Frenchman. After we got rid of these parties we proceeded to cruise about again, and on the following morning we came across the Danish brig Ceres, bound for Gibraltar, and I, and H. G. Wagner, and William Evans, and John Short, and the cook were put on board of her. We remained on board of this ship until her provisions running short, I and Wagner and Evans and Short were put on board the Regatta, bound for Liverpool, where I arrived yesterday, but Wagner and Evans were put on board the Inca, also bound for Liverpool, as our water was running short.

(Signed) JOHN TRADER.

Sworn at Liverpool, in the county of Lancaster, this 5th day of June, 1863, before me.

(Signed) JOHN YATES,

A Commissioner to administer Oaths in the Courts of Exchequer or Pleas.

[14] *[Inclosure 4 in No. 7.]

Affidavit of Henry George Wagner.

I, Henry George Wagner, at present on board the bark Inca of Liverpool, now lying in the King's dock, in the port of Liverpool, in the county of Lancaster, seaman, make oath and say:

1. In the month of March last I shipped at Baltimore on board the bark Henrietta of Baltimore, G. D. Brown master, for a voyage to Rio. The Henrietta was a vessel of 440 tons, and we had a crew of thirteen all told, and a Mr. Roberts, a Mr. Morris, and a lady by the name of Florence with her three children, were passengers.

2. On the 20th of March we sailed from Baltimore, and proceeded on our voyage without anything happening until the 23d of April; we were then about fifty-six miles south of the equator, and were becalmed, when at 4 in the afternoon we saw a strange sail to the stern of us. The stranger had no sails set but was under steam, and about 5 or 6 o'clock the stranger came up with us. She had the American flag flying at the fore royal masthead, and nothing at the peak. She hailed us, and asked us where we were from, and where bound to. We told him, and he then sung out to us to back our mainyard, and he would send his boat alongside. Captain Brown refused to back his mainyard. The stranger then lowered three boats, and came alongside and boarded us. There were four officers and twelve men. They were all armed with revolvers and cutlasses.

3. When they came on board they asked Captain Brown for his papers and irons. The captain said he had no papers, but he told them where the irons were. Captain Brown was then ordered into one of the boats, and the two mates and the passengers also went into the same boat on board the stranger. I and the rest of the crew of the Henrietta were then ordered into another of the boats, and were rowed to the stranger. When we got under her stern, the stranger hoisted the southern flag. We then went on board the stranger, and I and the rest of the seamen were put in irons.

4. The other of the stranger's boats brought the captain's and passengers' clothes, chronometer, charts, and other things, but they did not bring our things. I only got an old shirt and a pair of old trousers beyond what I stood up in, when taken out of my ship.

5. After the boats had all come from our ship, and we had been on board about an hour and an a quarter, I saw the flames coming up out of the cabin windows of the Henrietta, and I then knew she had been fired. The stranger, as soon as she saw the ship was burning, put off from her, and went about ten miles away and then laid to.

6. We were on deck, and could see our ship burning until about 3 in the morning, when the fire went out about half past 5 or 6 o'clock. The stranger, whose name we now learned was the Florida, steamed past our vessel, which was burned almost to the water's edge.

7. After we had passed our ship the Florida continued to cruise about, and just afterwards we hailed a strange sail, which turned out to be an English bark, bound to Liverpool from Buenos Ayres. The captain of the Florida asked him if he would like any passengers, but the master of the bark said he could not do so. We then continued cruising about flying the American colors, and about 8 o'clock on the 24th of April a sail was seen to the northwest of us, and we then made for her and overhauled her about 10 o'clock. She was hailed, and answered that she was the Oneida, of New Bedford, bound to New York from Shanghai, and loaded with tea. The captain of the Florida then ordered three boats and crew to go on board of the Oneida, which they did, and after bringing the captain and crew of sixteen in all on board, the ship was set fire to. We lay by until the lower sails had caught, and the Florida then steamed away.

8. In the afternoon of the same day we spoke a strange bark, which turned out to be from Bordeaux bound for New South Wales, and one of the Florida's boats took Captain Brown, one of the crew of the Henrietta, Peter Brown, and went on board the Frenchman. Our captain told us he was going to see if the French captain would take all of us and the passengers on board. When our captain came back, he told us that the Frenchman could not take the crew, but that he, the master and passengers and one of the boys, the captain's son, and the captain and mate of the Oneida, were going on board, and they subsequently went on board. Peter Brown, one of our seamen, also went on board. He acted as interpreter.

9. The Florida, after she had put the captain of the Henrietta and Oneida and the others on board the Frenchman, laid-to until daylight of the next day, which was the 25th of April. In the morning of that day, about 8 o'clock, a strange sail was seen which we made for under all steam, and after running after her for about an hour
[15] *and a half, another sail came in sight, and we then ran for her, and spoke her. She turned out to be the Danish brig Ceres bound to Gibraltar for orders. The first lieutenant of the Florida hailed her and asked if she could take any passengers. The master of the Ceres said he could take five, and the captain of the Florida then

sent me, and John Shutt, and William Evans, John Trader, and our cook, in one of the Florida's boats on board the Ceres. I remained on board the Ceres until the 2d of May, when our provisions running short, the captain of the Ceres spoke the English bark Regatta, bound for Liverpool, and I, and William Evans, and John Shutt, and John Trader, were put on board the Regatta.

10. On the 18th May, the Regatta's water running short, I and William Evans were put on board the Inca, which we had previously spoken, and we arrived in Liverpool yesterday.

During the whole of the time I was in the Florida we were left on the deck and in irons, and when we went on board we found some fourteen or fifteen other prisoners.

11. The Florida carried two large pivot guns, one forward and one aft, and she had three large guns on each side. The crew was a mixed one, most of them being Irishmen. They numbered, I should think, about 130. We were asked to join the Florida, and were offered £22 a month, £50 bounty, and a share of prize money, but we refused to join under any conditions.

(Signed) HENRY G. WAGNER.

Sworn at Liverpool in the county of Lancaster, this 5th day of June, 1863, before me.

(Signed) JOHN YATES,
A Commissioner for taking Affidavits in the Court of Exchequer or Pleas.

No. 8.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *July* 13, 1863.

SIR: I have the honor to acknowledge the receipt of your letter of the 7th instant, inclosing papers relative to the destruction of the American ships Golden Eagle and Henrietta by the Alabama and the Florida, and calling attention to the circumstance that the Virginia continued up to the 23d ultimo to be the property of a British subject residing at Liverpool.

So far as it may be intended, by the communication of the inclosed papers, to assert or record a claim against Her Majesty's government on account of the destruction of those vessels, I would beg leave to refer you to my letter of the 9th of March last, and to repeat that Her Majesty's government entirely disclaim all responsibility for the acts of vessels of war of the so-styled confederate government.

I have, however, called for a report from the proper authorities with regard to your statement respecting the Virginia.

I am, &c.,
(Signed) RUSSELL.

No. 9.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *August* 17, 1863.

SIR: My attention has been called by a member of the firm of Messrs. Fraser, Trenholm & Co., of Liverpool, to a letter which appeared in the Daily News of the 2d of April last, purporting to be a letter addressed by Mr. Thomas H. Dudley, United States consul at Liverpool, to the collector of customs at that port.

In that letter it is stated that when the Alabama was first tried, Mr.

Welsman, one of the firm of Fraser, Trenholm & Co., was present, and that he accompanied that vessel on her various trials, as he had also accompanied the Oreto on her trial-trip and on her departure.

Mr. Welsman positively denies that he was present when the Alabama was first tried, or that he ever accompanied her in any way on any of her supposed trials. He further denies that he ever set foot on
[16] board the Oreto; and he has recorded these *denials in an affidavit subscribed and sworn to before the acting British consul at Charleston.

With the view of placing Mr. Welsman's statement still further upon record, and as evidence of the incorrectness of Mr. Dudley's assertion, I have the honor to communicate to you the substance of Mr. Welsman's affidavit for the information of your Government.

I am, &c.,
(Signed) RUSSELL.

No. 10.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, August 22, 1863. (Received August 24.)

MY LORD: I have the honor to acknowledge the reception of your note of the 17th instant, relating to the notice taken by Mr. Welsman, one of the firm of Fraser, Trenholm & Co., of certain statements made respecting him by Mr. Dudley, the consul of the United States at Liverpool. I have transmitted a copy of the same for the information of my Government, and another to Mr. Dudley.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

No. 11.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, August 24, 1863. (Received August 25.)

MY LORD: I am directed by my Government to lay before your lordship copies of a letter and memorial addressed to the Secretary of State of the United States by Messrs. Upton, claiming indemnity for the destruction of the ship Nora, burnt at sea by a vessel fitted out and dispatched from the port of Liverpool. I am instructed to request that the substance of this claim may be considered as added to others of the same kind which it has been my painful duty to present to your lordship heretofore.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[Inclosure 1 in No. 11.]

Messrs. Upton to Mr. Seward.

BOSTON, *July* 14, 1863.

SIR: We respectfully inclose a memorial and protest in the case of the ship Nora, burnt at sea by the vessel calling herself the Alabama.

The general facts are stated in the body of the memorial, and we therefore refrain from a repetition in this communication.

In most respectfully asking the attention of the Government to this matter, we remain, &c.,

(Signed) GEO. B. UPTON.
GEO. B. UPTON, JR.

[Inclosure 2 in No. 11.]

Protest.

To the Hon. WILLIAM H. SEWARD,
Secretary of State, Washington, D. C.:

The memorial of George B. Upton and George B. Upton, jr., citizens of the United States, residing in Boston, in the State of Massachusetts, sole owners of the American ship Nora, respectfully represents:

That said ship, being a legally-registered American ship, left the port of Bangor, in the United States, for the port of Liverpool, in Great Britain, on the 29th day of November, 1862. That said ship arrived in safety at said port of Liverpool, where, after being discharged, she was laden with a cargo upon the charter of Mr. W. N. de
[17] Matos, from said port of Liverpool to Calcutta, the undersigned having no other personal interest in said cargo than the usual lien for the freight thereof; the cargo being, as represented to them, the property of British subjects. Said ship sailed from the port of Liverpool on or about the 15th day of February of the present year, and had proceeded on her voyage as far as latitude 1° 23' north, longitude 26° 30' west, when she was boarded by, and declared to be a prize to, a vessel calling herself "the Confederate States man-of-war Alabama," who immediately took possession of said ship, against the remonstrance of the master, and who further proceeded to remove sundry stores from said ship; and on the 27th day of March the said ship was set on fire by the order of one Semmes, calling himself the captain of said steamer, and was totally destroyed; and said officers and crew were taken from said ship Nora, and kept on board said piratical steamer Alabama, from the date of the destruction of said ship until the 16th day of April last past.

And now we, the said George B. Upton, and George B. Upton, jr., sole owners of said ship, do enter our solemn protest against the destruction thereof, and do by these presents demand of the government of Great Britain full reparation of the same, in the sum of $80,000 of the coin of the United States, being the value of the said ship and freight at the time of her destruction.

Your memorialists would further represent that they make and predicate this protest and demand upon the facts hereinafter stated, which can be verified whenever it shall be found necessary so to do. Said vessel calling herself "the Confederate States man-of-war Alabama," is an English vessel, and no other. She was built at the port of Birkenhead, and was allowed to leave British waters, although information as to her character, and the intention to use her as a privateer to prey upon the commerce of the United States, then and now at peace with Great Britain, was lodged with the British government. That said steamer Alabama (then called the 290) was allowed to leave said waters upon giving a bond to return, which it was well known was intended to be forfeited. That she did not leave the waters of Great Britain the latter part of July, 1862, under the protection of the British flag, and manned by British subjects. That had the American man-of-war Tuscarora, or any other legally authorized man-of-war of the United States, seized her after leaving said British waters, she would have claimed her British ownership and her flag as her protection. But said steamer was allowed to leave port under the pretense of making a trial-trip, and has never been in any port of the so-called Confederate States, so as to change her flag, or to be otherwise than a British vessel.

Your memorialists would further represent that said steamer, after thus fraudulently leaving the ports of Great Britain against the Queen's proclamation of neutrality, repeatedly visited or came within the jurisdiction of certain British islands in the Atlantic Ocean, when and where it was well known and patent to the world that she had destroyed American vessels on the high seas; and instead of being seized and detained by the British government, as they were in duty bound to do, was allowed every

facility for obtaining supplies and advice, and to resume her piratical cruise. That no examination was ever made by said British government, through their constituted agents and officers, as to the manning of said steamer by British subjects, or of the prostitution of the British flag by thus giving protection to the piracies committed under its folds; and that she was, and has continued to be, until after the capture of your memorialists' ship Nora, principally manned by British subjects.

In view of these matters, and of others which may be made to appear, your memorialists do now and forever enter their solemn protests against the British government and people, as willing parties, negligently culpable, in the destruction of their property on the high seas, and thus in first violating the proclamation of the Queen by building and manning said steamer, and then allowing her to continue her depredations.

And they ask, through the Government of the United States, that a proper representation may be made of their loss, that in the end due reparation may be made to them by the said government of Great Britain, or that the Government of the United States may assume the same as one of the governmental obligations to protect the rights of their citizens thus wantonly violated.

And as in duty bound will ever pray.

(Signed) GEO. B. UPTON.
GEO. B. UPTON, JR.

BOSTON, *July* 14, 1863.

[18] UNITED STATES OF AMERICA,
Commonwealth of Massachusetts, Suffolk, ss:

Be it known to all whom it doth or may concern, that on this 14th day of July, in the year of our Lord 1863, before me, John S. Tyler, a notary public and justice of the peace, under the great seal of the commonwealth, duly commissioned and sworn at my office in the city of Boston, personally came George B. Upton and George B. Upton, jr., resident merchants of this city, to me well known, and made before me the foregoing memorial and protest, declaring the same to be just and true. Wherefore at the request of the said appearers I have caused the same to be verified by the oaths of said appearers, and to be entered on my notarial record to serve as occasion may require.

In testimony whereof I hereto affix my official seal the day of the date above written.

(Signed) JOHN S. TYLER,
Notary Public and Justice of the Peace.

No. 12.

Mr. Layard to Mr. Laird, M. P.

FOREIGN OFFICE, *August* 31, 1863.

SIR: In a note which Lord Russell has lately received from Mr. Adams the Alabama is described as a vessel "fitted out and dispatched from the port of Liverpool," and his lordship directs me to say that he would feel much obliged to you if you could inform him how far it is true that the Alabama was fitted out as a vessel of war at Liverpool before she left that port.

I am, &c.,
(Signed) A. H. LAYARD.

No. 13.

Mr. Laird, M. P., to Mr. Layard.

BIRKENHEAD, *September* 2, 1863.

SIR: In reply to your letter of the 31st August, stating that Lord Russell would feel much obliged to me if I can inform him "how far it is true that the Alabama was fitted out as a vessel of war at Liverpool before she left that port," I request that you will inform his lordship

that I am not able from my own personal observation or knowledge to reply to his lordship's inquiry, as I did not see the Alabama after the first week in July, 1862, being some weeks before she sailed.

In order to obtain for his lordship from a reliable source the information he has asked for, I have made inquiries from my successors in business, the firm of Laird Brothers, the builders of the vessel now called the Alabama, and I am authorized by them to state that the vessel referred to was delivered by them at the port of Liverpool, and that at the time of her delivery she was not fitted out as a vessel of war.

They also confirm in every respect the report of Mr. Morgan, the surveyor of customs at Liverpool, dated 30th July, 1862, (ordered by the House of Commons to be printed 24th March, 1863,) in which he states that a strict watch had been kept upon the vessel, and that she left the port without any part of her armament on board.

I am, &c.,
(Signed) JOHN LAIRD.

No. 14.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *September* 14, 1863.

SIR: In acknowledging the receipt of your letter of the 24th ultimo, in which you request that Messrs. Upton's claim on account of the destruction of their vessel the Nora by the Alabama may be added to others of the same kind which you have heretofore presented to me, I must, on the part of Her Majesty's government, repeat the disclaimer which on more than one occasion I have already made to you of all responsibility in regard to the proceedings of the Alabama, or of any other confederate cruiser.

But, as it is stated in your letter that the Alabama was "fitted out
[19] and dispatched *from the port of Liverpool," and as these words imply that you suppose she was fitted out as a vessel of war, I have thought it right to ask Mr. Laird how far that statement is borne out by the facts, and I have the honor to inclose, for your information, a copy of a letter which I have received from that gentleman in reply,[1] stating that from the information he had received it appears that the Alabama was not fitted out at Liverpool as a vessel of war.

When the United States Government assumes to hold the government of Great Britain responsible for the captures made by vessels which may be fitted out as vessels of war in a foreign port because such vessels were originally built in a British port, I have to observe that such pretensions are entirely at variance with the principles of international law, and with the decisions of American courts of the highest authority; and I have only, in conclusion, to express my hope that you may not be instructed again to put forward claims which Her Majesty's Government cannot admit to be founded on any grounds of law or justice.

I am, &c.,
(Signed) RUSSELL.

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[1] No. 13.

No. 15.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, September 17, 1863. (Received September 18.)

MY LORD: I have had the honor to receive your note of the 14th instant, in reply to mine of the 24th ultimo, presenting the claim of Messrs. Upton on account of the destruction of the ship Nora. I shall transmit a copy of the same for the consideration of my Government, with whom the withdrawal of instructions necessarily rests. In the mean time I shall abstain from presenting the papers in another case which have come to hand until further advices.

I cannot but regret that your lordship should have adduced the evidence of Mr. Laird in support of any proposition made to my Government. I trust that I may be pardoned if I remind you that the statements made heretofore by that person in Parliament respecting their action are not such as are likely to lead to their implicit credence in any relating to his own.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

No. 16.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, September 29, 1863. (Received September 30.)

MY LORD: I have the honor to transmit the copy of a letter received by me from Mr. Walter Graham, consul of the United States at Cape Town, in relation to certain occurrences at that place connected with the armed vessel called the Alabama.

Without intending to sustain all the allegations therein contained, I cannot but consider that a sufficient basis of fact exists to support his remonstrance against the recognition of the captures of vessels, which appears to have been, at least partially, made by the authorities at Cape Town.

In the absence of special instructions on the subject, I take the liberty simply to present the papers for your lordship's consideration, not doubting the disposition of Her Majesty's government to do full justice in the premises.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[Inclosure in No. 16.]

Mr. Graham to Mr. Adams.

UNITED STATES CONSULATE, CAPE TOWN, CAPE OF GOOD HOPE,
August 17, 1863.

SIR: The confederate steamer Alabama arrived on this coast on the 27th day of July, having captured six American vessels from the time she left Bahia, Brazil, viz, the
[20] *Amazonian, Talisman, Conrad, S. Gildersleve, Anna F. Schmidt, and Express.

On the same day that she arrived on this coast she spoke a small British schooner named the Rover, which reported her next day at this port, (July 28.) She was afterward seen by other vessels on the morning of the 28th, but no intelligence was received here that she had entered any of the ports or bays of this colony until Tuesday, the 4th of August, when the British schooner Atlas reported that she had entered Saldanha Bay on the 28th, and was still there, her crew being engaged in painting her.

Captain Boyce, of the Atlas, said he was requested by Captain Semmes to take some prisoners to me at Cape Town, but he declined to do so.

On hearing this intelligence I wrote the following letter to the governor, which I carried in person, to request an interview on the subject to which it treated:

"UNITED STATES CONSULATE,
"*Cape Town, August* 4, 1863.

"SIR: From reliable information received by me, and which you are also doubtless in possession of, a war steamer called the Alabama is now in Saldanha Bay being painted, discharging prisoners of war, &c.

"The vessel in question was built in England to prey upon the commerce of the United States of America, and escaped therefrom while on her trial-trip, forfeiting bonds of £20,000, which the British Government exacted under the foreign-enlistment act.

"Now, as your government has a treaty of amity and commerce with the United States, and has not recognized the persons in revolt against the United States as a government at all, the vessel alluded should be at once seized and sent to England, from whence she clandestinely escaped. Assuming that the British government was sincere in exacting the bonds, you have doubtless been instructed to send her home to England, where she belongs. But if, from some oversight, you have not received such instructions, and you decline the responsibility of making the seizure, I would most respectfully protest against the vessel remaining in any port of the colony another day. She has been at Saldanha Bay four [six] days already, and a week previously on the coast, and has forfeited all right to remain an hour longer by this breach of neutrality. Painting a ship does not come under the head of 'necessary repairs,' and is no proof that she is unseaworthy; and to allow her to visit other ports after she has set the Queen's proclamation of neutrality at defiance would not be regarded as in accordance with the spirit and purpose of that document.

"Yours, &c.,
(Signed) "WALTER GRAHAM,
"*United States Consul.*

"His Excellency Sir PHILLIP E. WODEHOUSE."

Not finding the governor at home, I left the above letter. Next morning, the 5th of August, I received the following:

"COLONIAL OFFICE, *August* 5, 1853.

"SIR: I am directed by the governor to acknowledge the receipt of your letter of yesterday's date relative to the Alabama.

"His Excellency has no instructions, neither has he any authority, to seize or detain that vessel; and he desires me to acquaint you that he has received a letter from the commander, dated the 1st instant, stating that repairs were in progress, and as soon as they were completed he intended to go to sea. He further announces his intention of respecting strictly the neutrality of the British government.

"The course which Captain Semmes here proposes to take is, in the governor's opinion, in conformity with the instructions he has himself received relative to ships of war and privateers belonging to the United States and the States calling themselves the Confederate States of America visiting British ports.

"The reports received from Saldanha Bay induce the governor to believe that the vessel will leave that harbor as soon as her repairs are completed; but he will, immediately on receiving intelligence to the contrary, take the necessary steps for enforcing the observance of the rules laid down by Her Majesty's Government.

"I have, &c.,
(Signed) "L. ADAMSON,
"*For the Colonial Secretary.*"

About 2 o'clock p. m. on the same day, (August 5,) it was reported from the signal-station of the harbor that the steamer Alabama was standing in, and also an American bark; and shortly after it was signaled that the steamer was standing toward the bark. On hearing this I at once took a cab and proceeded in the direction of Green Point, about two miles from my office, where I witnessed the capture of the bark Sea Bride by the Alabama. I immediately proceeded to the governor's

[21]

house and told him what I had seen, protesting at the same time against the capture, because it was permitted in British waters.

His excellency remarked that the question of infringement of neutral rights would be purely dependent upon testimony; but he assured me that in any event no breach of neutrality would be permitted, so far as he could prevent it. He concluded the interview by stating that he would immediately telegraph the admiral of the station at Simon's Bay to send a war vessel round to this harbor (Table Bay) to enforce a strict neutrality; and requested me to put my protest in writing.

At 3 o'clock I returned to my office, and at 4 o'clock I dispatched the following letter:

"UNITED STATES CONSULATE,
"*Cape Town, August* 5, 1863.

"SIR: The confederate steamer Alabama has just captured an American bark off Green Point, or about four miles from the nearest land. (Robben Island.) I witnessed the capture with my own eyes, as did hundreds of others at the same time. This occurrence at the entrance of Table Bay, and clearly in British waters, is an insult to England, and a grievous injury to a friendly power, the United States.

"Toward the Government of my country and her domestic enemies the government of England assumes a position of neutrality, and if the neutrality can be infringed with impunity, in this bold and daring manner, the Government of the United States will no doubt consider the matter as one requiring immediate explanation.

"Believing that the occurrence was without your knowledge or expectation, and hoping you will take such steps to redress the outrage as the exigency requires,

"I am, &c.,
(Signed) "WALTER GRAHAM,
"*United States Consul.*

"His Excellency Sir PHILIP E. WODEHOUSE."

About 5 o'clock his excellency sent for me to the custom-house, and informed me that Captain Semmes desired to land some prisoners, and that he, the governor, would grant permission provided I would agree to support them. This I consented to do, and the governor then acknowledged the receipt of my letter, and repeated his assurances that no breach of neutrality would be permitted.

Next morning (Thursday, August 6) I received the following:

"COLONIAL OFFICE, *August* 6, 1863.

"SIR: I am directed by the governor to acknowledge the receipt of your letter of yesterday's date respecting the capture of the Sea Bride by the Alabama, and to acquaint you that he will lose no time in obtaining accurate information as to the circumstances of the capture.

"I have, &c.,
(Signed) "RAWSON W. RAWSON,
"*Colonial Secretary.*"

About the same time this letter was received all the prisoners were landed, fifteen of whom were the crew of the Anna F. Schmidt, fifteen of the Express, and twelve of the Sea Bride.

On the afternoon of the same day I dispatched the following:

"UNITED STATES CONSULATE,
Cape Town, August 6, 1863.

"SIR: I have the honor to acknowledge the receipt of your dispatch of this date.

"I beg now to inclose, for your excellency's perusal, the affidavit of Captain Charles F. White, of the Sea Bride, protesting against the capture of the said bark in British waters. The bearings taken by him at the time of capture conclusively show that she was in neutral waters, being about two and a half miles from Robben Island. This statement is doubtless more satisfactory than the testimony of persons who measured the distance by the eye.

"I believe there is no law defining the word 'coast' other than international law. That law has always limited neutral waters to the fighting distance from land, which, upon the invention of gunpowder, was extended to a distance of three nautical miles from land on a straight coast, and by the same rule, since the invention of Armstrong rifled cannon, to at least six miles.

[22] *"But all waters inclosed by a line drawn between two promontories or headlands are recognized by all nations as neutral, and England was the first that adopted the rule, calling such waters the 'king chambers.' By referring to Wheaton's Digest, page 234, or any other good work on international law, you will find the above rules laid down and elucidated.

"The fact that the prize has not already been burned, and that her fate is still in

suspense, is clear proof that Captain Semmes had misgivings as to the legality of the capture, and awaits your excellency's assent. If you decide that the prize was legally taken, you will assume a responsibility which Captain Semmes himself declined to take.

"I have, &c.,
(Signed) "WALTER GRAHAM,
"*United States Consul.*"

"UNITED STATES CONSULATE,
"*Cape Town, August* 6, 1863.

"On the 6th day of August, A. D. 1863, personally appeared before me, Walter Graham, consul of the United States at Cape Town, Charles F. White, master of the bark Sea Bride, of Boston, from New York, and declared, on affidavit, that, on the 3d day of August instant, he sighted Table Mountain and made for Table Bay, but that on the 4th instant, night coming on, he was compelled to stand out. On the 5th instant he again made for the anchorage, and about 2 p. m. saw a steamer standing toward the bark, which he supposed was the English mail-steamer, but on nearing her he found her to be the confederate steamer Alabama. He, Captain White, was peremptorily ordered to heave his vessel to as a prize to the Alabama. One gun was first fired, and immediately after the demand was made another gun was fired. Two boats were lowered from the Alabama and sent on board the bark. The officer in charge of these boats demanded the ship's papers, which the said master was compelled to take on board the said steamer. This happened about a quarter before 3 o'clock. He and his crew were immediately taken from his vessel and placed as prisoners on board the Alabama, the officers and crew being put in irons. The position of the bark at the time of capture was as follows: Green Point light-house bearing south by east; Robben Island light-house, northeast.

"The said appearer did further protest against the illegal capture of said vessel, as she was in British waters at the time of capture, according to bearings.

"Thus done and protested before me, the said consul, the day, month, and year above written.

(Signed) "WALTER GRAHAM,
"*United States Consul.*
"CHARLES F. WHITE,
"*Master Sea Bride.*"

Next morning (August 7) I received the following:

"COLONIAL OFFICE, *August* 7, 1863.

"SIR: I am directed by the governor to acknowledge the receipt of your letter of yesterday's date, inclosing an affidavit made by the master of the Sea Bride, and to acquaint you that an inquiry into them is now in progress.

"I have, &c.,
(Signed) "RAWSON W. RAWSON,
"*Colonial Secretary.*

On the same day I sent the governor the following:

"UNITED STATES CONSULATE,
"*Cape Town, August* 7, 1863.

"SIR: Understanding from your letter of this date, received this morning, that the case of the Sea Bride is still pending, I inclose the affidavits of the first officer of that vessel and the cook and steward, which I hope will throw additional light on the subject.

"From the affidavit of the first officer it appears that the alleged prize was brought with one and a half miles of Green Point light-house yesterday, at 1 o'clock p. m. Now, as the vessel was at that time in charge of a prize crew, it was a violation of neutrality as much as if the capture had been made at the same distance from land.

"Pending your decision of the case I would most respectfully suggest that the prize crew on board the Sea Bride be removed, and that the vessel be put in charge of a crew from Her Majesty's ship Valorous.

(Signed) "WALTER GRAHAM,
"*United States Consul.*

"His Excellency Sir PHILIP E. WODEHOUSE."

[23] * The inclosures of the above letter gave the bearing of the ship at the time mentioned, which were as follows: Robben Island light-house, northeast by north one-half north; Green Point light-house, southwest one-half west.

The steward also testified that orders were given to burn the Sea Bride at 2 o'clock a. m. on the 6th, which were afterward countermanded when all was ready.

On Friday I learned, unofficially, that testimony had been taken that day before a clerk of the peace in Cape Town, in relation to the capture of the Sea Bride, and that the testimony consisted of statements as to the distance from land, estimated by persons on land, at the time of capture, and that the testimony of Captain White and others of the Sea Bride and of the Alabama was thrown out or not taken.

On Saturday at 4 o'clock p. m. I received the following:

"COLONIAL OFFICE, *August* 8, 1863.

"SIR: With reference to the correspondence that has passed relative to the capture by the Confederate States steamer Alabama of the bark Sea Bride, I am directed by the governor to acquaint you that, on the best information he has been able to procure, he has come to the conclusion that the capture cannot be held to be illegal, or in violation of the neutrality of the British government, by reason of the distance from land at which it took place.

"His excellency will, by next mail, make a full report of the case to Her Majesty's government.

"I have, &c.,

(Signed) "RAWSON W. RAWSON,
"*Colonial Secretary.*"

On Monday morning I dispatched the following:

"UNITED STATES CONSULATE,
"*Cape Town, August* 10, 1863.

"SIR: Your decision in the case of the Sea Bride was duly received at 4 o'clock p. m. on Saturday. In communicating that decision you simply announce that the vessel was, in your opinion, and according to evidence before you, a legal prize to the Alabama; but you omit to state the principle of international law that governed your decision, and neglect to furnish me with the evidence relied upon by you.

"Under these circumstances I can neither have the evidence verified or rebutted here, nor am I enabled to transmit it as it stands to the American minister at London, nor to the United States Government at Washington. An invitation to be present when the *ex parte* testimony was taken was not extended to me, and I am therefore ignorant of the tenor of it, and cannot distinguish the portion thrown out from that which was accepted. If your decision is that the neutral waters of this colony only extend a distance of three miles from land, the character of that decision would have been aptly illustrated to the people of Cape Town had an American war-vessel appeared on the scene, and engaged the Alabama in battle. In such a contest, with cannon carrying a distance of six miles, (three over land,) the crashing buildings in Cape Town would have been an excellent commentary on your decision.

"But the decision has been made and cannot be revoked here, so that further comment at present is, therefore, unnecessary. It can only be reversed by the government you represent, which it probably will be when the United States Government shall claim indemnity for the owners of the Sea Bride.

"An armed vessel named the Tuscaloosa, claiming to act under the authority of the so-called Confederate States, entered Simon's Bay on Saturday the 8th instant. That vessel was formerly owned by citizens of the United States, and while engaged in lawful commerce was captured as a prize by the Alabama. She was subsequently fitted out with arms by the Alabama to prey upon the commerce of the United States, and now, without having been condemned as a prize by any admiralty court of any recognized government, she is permitted to enter a neutral port in violation of the Queen's proclamation, with her original cargo on board. Against this proceeding I hereby most emphatically protest, and I claim that the vessel ought to be given up to her lawful owners. The capture of the Sea Bride in neutral waters, together with the case of the Tuscaloosa, also a prize, constitutes the latest and best illustration of British neutrality that has yet been given.

"I have, &c.,

(Signed) "WALTER GRAHAM,
"*United States Consul.*

"His Excellency Sir PHILIP E. WODEHOUSE."

[24] *On the same day I received the following:

"COLONIAL OFFICE, *August* 10, 1863.

"SIR: I am directed by the governor to acknowledge the receipt of your letter of this date, and to state with reference to that part of it which relates to the Tuscaloosa, that his excellency is still in correspondence with the commander-in-chief respecting the character of that vessel, and the privileges to which she is entitled.

"I have, &c.,

(Signed) "RAWSON W. RAWSON,
"*Colonial Secretary.*"

I did not reply to the foregoing until Wednesday, the 12th instant, when I sent the following:

"UNITED STATES CONSULATE,
"*Cape Town, August* 12, 1863.

"SIR: Upon receiving your last communication to me dated the 10th instant, I deemed it simply a report of progress on one subject treated of in my last letter to your excellency, and I have therefore waited anxiously for the receipt of another letter from the colonial secretary communicating the final result in that case. Failing to receive it, and hearing yesterday p. m. that the Tuscaloosa would proceed to sea from Simon's Bay to-day, I applied for an injunction from the supreme court to prevent the vessel sailing before I had an opportunity of showing by witnesses that she is owned in Philadelphia, in the United States; that her true name is Conrad; that she has never been condemned as a prize by any legally constituted admiralty court: and that I am *ex officio* the legal agent of the owners, underwriters, and all others concerned. I have not yet learned the result of that application, and fearing that delay may allow her to escape, I would respectfully urge you to detain her in port until the proper legal steps can be taken.

"I am well aware that your government has conceded to the so-called Confederate States the rights of belligerents, and is thereby bound to respect Captain Semmes's commission; but having refused to recognize the 'confederacy' as a nation, and having excluded his captures from all the ports of the British empire, the captures necessarily revert to their real owners, and are forfeited by Captain Semmes as soon as they enter a British port.

"Hoping to receive an answer to this and the preceding letter as early as possible, and that you will not construe my persistent course throughout this correspondence on neutral rights as importunate, or any remarks as inopportune,

"I have, &c.,
(Signed) "WALTER GRAHAM,
"*United States Consul.*"

Late on the same day I received the following:

"COLONIAL OFFICE, *August* 12, 1863.

"SIR: I am directed by the governor to acknowledge the receipt of your letter of this date, and to acquaint you that it was not until late last evening that his excellency received from the naval commander-in-chief information that the condition of the Tuscaloosa was such as, as his excellency is advised, to entitle her to be regarded as a vessel of war.

"The governor is not aware, nor do you refer him to the provisions of international law by which captured vessels, as soon as they enter our neutral ports, revert to their real owners, and are forfeited by their captors. But his excellency believes that the claims of contending parties to vessels captured can only be determined in the first instance by the courts of the captor's country.

"The governor desires me to add that he cannot offer any objection to the tenor of the correspondence which you have addressed him on this subject, and that he is very sensible of the courtesy you have exhibited under such very peculiar circumstances. He gives you credit for acting on a strict sense of duty to your country.

"I have, &c.,
(Signed) "RAWSON W. RAWSON,
"*Colonial Secretary.*"

On the 17th instant (Monday) I wrote the following letter:

"UNITED STATES CONSULATE,
"*Cape Town, August* 17, 1863.

"SIR: I have delayed acknowledging the receipt of your last letter dated the 12th August on account of events transpiring, but which have not yet culminated so as to form the subject of correspondence.

"Your decision that the Tuscaloosa is a vessel of war, and by inference a prize, astonishes me, because I do not see the necessary incompatibility. Four guns were taken
[25] from on board the Talisman (also a prize) and put on board the Conrad, (Tuscaloosa,) but that transfer did not change the character of either vessel as a prize, for neither of them could cease to be a prize till it had been condemned in an admiralty court of the 'captor's country,' which it is not pretended has been done. The Tuscaloosa, therefore, being a prize, was forbidden to enter Simon's Bay by the Queen's proclamation, and should have been ordered off at once, but she was not so ordered. Granting that Her Majesty's proclamation affirmed the right of Captain Semmes as a belligerent to take and to hold prizes on the high seas, it just as emphatically denied his right to hold them in British ports. Now, if he could not hold them in Simon's

Bay, who else could hold them except those whose right to hold them was antecedent to his—that is, the owners?

"The Tuscaloosa remained in Simon's Bay seven days with her original cargo of skins and wool on board. This cargo, I am informed by those who claim to know, has been purchased by merchants in Cape Town; and if it should be landed here directly from the prize, or be transferred to other vessels at some secluded harbor on the coast beyond this colony, and brought from thence here, the infringement of neutrality will be so palpable and flagrant that Her Majesty's government will probably satisfy the claims of the owners gracefully and at once, and thus remove all cause of complaint. In so doing it will have to disavow and repudiate the acts of its executive agents here—a result I have done all in my power to prevent.

"Greater cause of complaint will exist if the cargo of the Sea Bride is disposed of in the same manner, as I have reason to apprehend it will be when negotiations are concluded: for being originally captured in neutral waters, the thin guise of neutrality would be utterly torn into shreds by the sale of her cargo here.

"The Georgia, a confederate war-steamer, arrived at Simon's Bay yesterday, and the Florida, another vessel of the same class, has arrived or is expected hourly at Saldanha Bay, where she may remain a week without your knowledge, as the place is very secluded. The Alabama remained here in Table Bay nearly four days and at Simon's Bay six days; and as the Tuscaloosa was allowed to remain at Simon's Bay seven days, I apprehend that the Georgia and Florida will meet with the same or even greater favors. Under such circumstances further protests from me would seem to be unavailing, and I only put the facts upon record for the benefit of my Government and officials possessed of diplomatic functions.

"I have, &c.,
(Signed) "WALTER GRAHAM,
"*United States Consul.*"

I have not as yet received any answer to the foregoing letter, and I have little else to communicate beyond what is embraced in my correspondence.

The Georgia reports no capture since she left Bahia, Brazil. The Alabama and Tuscaloosa are cruising on this coast near Table Bay.

No American war-ships have yet appeared here, but they are anxiously looked for.

Two merchants from this place have gone to Saldanha Bay to buy prize cargoes. When they return I will watch their proceedings closely.

A company of speculators offered Captain Semmes £4,000 for the Sea Bride and cargo, and he would have taken it, but he wanted a bond that they would not revert to the enemy. They offered me a large bribe if I would give my authority to have them sold here for the benefit of the underwriters, they asking £7,000 for the ransom: but I refused to give them any authority to sell. This was before Captain Semmes spoke of the bond.

Should anything else occur in connection with this affair I will let you know as soon as any mail leaves here.

* * * * * * *

I have, &c.,
(Signed) WALTER GRAHAM,
United States Consul.

No. 17.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *October* 2, 1863.

SIR: I have the honor to acknowledge the receipt of your letter of the 29th ultimo, inclosing copies of communications which have been made to you by the consul of the United States at Cape Town relative [26] to the proceedings at that place of the steam-vessel *Alabama, and I beg to inform you that the matter has already been brought to the notice of Her Majesty's government, and is now under their consideration.

I am, &c.,
(Signed) RUSSELL.

No. 18.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES.
London, October 23, 1863. (Received October 23.)

MY LORD: It may be within your recollection that in the note of the 17th of September which I had the honor to address to you in reply to yours of the 14th of the same month, respecting the claim for the destruction of the ship Nora, and other claims of the same kind, which I had been instructed to make, I expressed myself desirous to defer to your wishes that they should not be further pressed on the attention of Her Majesty's government, so far as to be willing to refer the question of the withdrawal of my existing instructions back for the consideration of my Government. I have now the honor to inform your lordship of the result of that application.

After a careful resurvey of all the facts connected with the outfit and later proceedings of the gun-boat No. 290, now known as the war-steamer Alabama, I regret to report to you that the Government of the United States finds itself wholly unable to abandon the position heretofore taken on that subject.

The reasons for this conclusion have been so often explained in the correspondence which I have heretofore had the honor to hold with your lordship touching this case that I shall endeavor to confine myself to a brief recapitulation.

The United States understand that they are at peace with Great Britain. That peace is furthermore secured by treaties which oblige both parties to refrain and to restrain their subjects from making war against each other.

They greatly regret to be compelled to admit the fact that the vessel known first as the gun-boat No. 290, and now as the Alabama, is roving over the seas capturing, burning, sinking, and destroying American vessels without lawful authority from any source recognized by international law, and in open defiance of all judicial tribunals established by the common consent of civilized nations as a restraint upon such a tyrannical mode of warfare.

That this vessel was built with the intent to make war against the United States by British subjects, in a British port, and that she was prepared there to be armed and equipped with a specified armament adapted to her construction for the very purpose she is now pursuing, does not appear to them to admit of dispute.

That this armament and equipment, adapted to this ship and no other, were simultaneously prepared by British subjects in a British port, with the intent to complete her preparation for her career, seems equally clear. Furthermore, it is sufficiently established that when this vessel was ready, and her armament and equipment were equally ready, she was clandestinely sent, by the connivance of her British holders, and the armament and equipment were at the same time clandestinely sent, through the connivance of the same or other British subjects who prepared them, to a common point outside of British waters, and there the armament and equipment of this vessel as a war-ship were completed.

This war-ship, thus deriving all its powers to do mischief from British sources, manned by a crew of British subjects enlisted in and proceeding from a British port, then went forth on her work to burn and destroy the property of the people of the United States, in fraud of the laws of Great Britain and in violation of the peace and sovereignty of

the United States. From the earliest to the latest day of her career she does not appear to have ever gained any other national character on the ocean than that which belonged to her in her origin.

From a review of all these circumstances essential to a right judgment of the question the Government of the United States understand that the purpose of the building, armament, equipment and expedition of this vessel carried with it one single criminal intent running equally through all the portions of this preparation, fully complete and executed, when the gun-boat No. 290 assumed the name of the Alabama; and that this intent brought the whole transaction in all its several parts here recited within the lawful jurisdiction of Great Britain, where the main portions of the crime were planned and executed.

Furthermore, the United States are compelled to assume that they gave due and sufficient previous notice to Her Majesty's govern-
[27] ment that this criminal enterprise was *begun and in regular process of execution, through the agencies herein described, in one of Her Majesty's ports. They cannot resist the conclusion that the government was then bound by treaty obligations and by the law of nations to prevent the execution of it. Had it acted with the promptness and energy required by the emergency they cannot but feel assured the whole scheme must have been frustrated. The United States are ready to admit that it did act so far as to acknowledge the propriety of detaining this vessel for the reasons assigned; but they are constrained to object that valuable time was lost in delays, and that the effort, when attempted, was too soon abandoned. They cannot consider the justice of their claim for reparation liable to be affected by any circumstances connected with these mere forms of proceeding on the part of Great Britain which are exclusively within her own control.

Upon these principles of law and these assumptions of fact resting upon the evidence in the case, I am instructed to say that my Government must continue to insist that Great Britain has made itself responsible for the damages which the peaceful, law-abiding citizens of the United States sustain by the depredations of the vessel called the Alabama.

In repeating this conclusion, however, it is not to be understood that the United States incline to act dogmatically, or in a spirit of litigation. They desire to maintain amity as well as peace. They fully comprehend how unavoidably reciprocal grievances must spring up from the divergence in the policy of the two countries in regard to the present insurrection. They cannot but appreciate the difficulties under which Her Majesty's Government is laboring from the pressure of interests and combinations of British subjects apparently bent upon compromising by their unlawful acts the neutrality which Her Majesty has proclaimed and desires to preserve, even to the extent of involving the two nations in the horrors of a maritime war. For these reasons I am instructed to say, that they frankly confess themselves unwilling to regard the present hour as the most favorable to a calm and candid examination by either party of the facts or the principles involved in cases like the one now in question. Though indulging a firm conviction of the correctness of their position in regard to this and other claims, they declare themselves disposed, at all times, hereafter as well as now, to consider in the fullest manner all the evidence and the arguments which Her Majesty's government may incline to proffer in refutation of it; and in case of an impossibility to arrive at any common conclusion I am directed to say, there is no fair and equitable form of conventional arbitrament or reference to which they will not be willing to submit.

Entertaining these views, I crave permission to apprise your lordship that I have received directions to continue to present to your notice claims of the character heretofore advanced, whenever they arise, and to furnish the evidence on which they rest, as is customary in such cases, in order to guard against possible ultimate failure of justice from the absence of it.

In accordance with these instructions I now do myself the honor to transmit the papers accompanying the cases heretofore withheld, pending the reception of later information.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[Inclosure 1 in No. 18.]

Mr. Weaver to Mr. Seward.

NEW YORK, *September* 5, 1863.

SIR: Herewith I inclose a claim against the Government of the United States, together with the documentary evidence of the claim, for the loss and destruction of the bark Union Jack, by the so-called Confederate States steamer Alabama. And I beg to request that you will have it filed for such action as may hereafter be taken, in other cases of a like nature.

With utmost respect, &c.,
(Signed) C. P. WEAVER,
Late Master of Bark Union Jack.

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[28] *[Inclosure 2 in No. 18.]

Declaration of Charles P. Weaver.

UNITED STATES OF AMERICA,
Commonwealth of Massachusetts, Suffolk, ss, city of Boston:

Be it known to all whom it doth or may concern, that on this 23d day of July, A. D. 1863, before me, George Howland Folger, a notary public, duly commissioned and sworn in and for the county aforesaid, personally appeared Charles P. Weaver, of Braintree, in the county of Norfolk, commonwealth of Massachusetts, master mariner, who did on oath declare that he was the owner of twenty sixty-fourth parts of the bark Union Jack, of Boston, in the commonwealth aforesaid, of the burden of 482$\frac{5}{95}$ tons, and that he was the sole agent for and representing the owners of the other portions of the said bark Union Jack, as appears by a power of attorney duly executed, a copy of which is herewith annexed, marked A: that the said bark was owned as follows:

Charles P. Weaver, twenty sixty-fourths, Benjamin F. Delane two sixty-fourths, Frederick Chandler one sixty-fourth, Charles A. Cousins one sixty-fourth, Elisha H. Ryder two sixty-fourths, Maurice M. Pigott two sixty-fourths, Albert B. Law one sixty-fourth, Wm. H. Hoskins one sixty-fourth, Henry Pigeon four sixty-fourths, of Boston, commonwealth aforesaid: Norton Pratt, of South Braintree, commonwealth aforesaid, sixteen sixty-fourths: Luther A. Robie, of Nashua, State of New Hampshire, eight sixty-fourths, Louisa Wilde one sixty-fourth, Howe Averell & Co. one sixty-fourth, and John Atkinson one-sixteenth, as will be seen by reference to the certificate of the collector of customs at Boston of the register of said bark, which is hereto annexed, marked B: that the said bark Union Jack, under the command of C. P. Weaver, sailed from the port of New York, on the 28th day of March, A. D. 1863, laden with a general cargo, and bound to the port of Shanghai, China. That the voyage was pursued without injury and nothing worthy of note occurred on board until the 3d day of May following, when in latitude 9° 40′, longitude 32° 30′, the said bark was seized and captured by the confederate steamer Alabama, and, by the crew of said steamer, the said bark was set on fire and burned and destroyed, together with her cargo and stores; that on the 12th day of May following the master and crew of said bark were landed at the port of Bahia, when they extended a protest before Thomas F. Wilson, United States consul at that port, setting forth a full account of the seizure

and destruction of said bark Union Jack and her cargo, a certified copy of which is herewith annexed, marked C; that by this seizure and destruction this appearer and the other appearers and the other owners, whom he represents, have suffered injury and loss to the amount of $48,720, as follows: By the destruction of the bark aforesaid $35,000, as per estimate of E. C. Davis, esq., marine inspector for the Boston board of underwriters, certificate of which is herewith annexed, marked D; and the further sum of $6,000, being the balance due under the charter-party payable in Shanghai, which together with the premium of exchange on Shanghai at this time, making the sum set forth, a copy of which charter-party is herewith annexed, marked E. And this appearer claims for loss of his nautical instruments and personal effects, stores for the use of the crew and belonging to him this appearer, and his expenses of passage and return to the United States, together with loss to himself, in consequence of the breaking up of the voyage, in the sum of $7,720, as set forth in statement of particulars marked F, making the aforesaid sum of $48,720.

And now the said appearer, Charles P. Weaver, in behalf of himself and the other owners whom he represents, prefers a claim against the Government of the United States of America, holding them responsible for all losses and expenses arising from the seizure, restraint, detainment, and destruction of the vessel aforesaid, this appearer and those he represents holding themselves ready to furnish any additional proof desired in the premises; and the said appearer believes that in equity the Government of the United States of America is bound to indemnify and hold them harmless for all losses, together with interest and expenses in consequence of the seizure herein set forth.

(Signed) C. P. WEAVER,

In testimony whereof I hereunto set my hand and notarial seal at the city of Boston, this 23d day of July, A. D. 1863; and the said Charles P. Weaver hath in my presence affixed his name, having solemnly sworn to the truth of the foregoing declaration.

(Signed) GEORGE H. FOLGER,
Notary Public and Justice of the Peace.

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[29] *A.—*Letter of attorney.*

Know all men by these presents that we, Abiel Gove and Elbridge G. Choate, co-partners under the firm name of Gove and Choate, Otis C. Howe, John Howe, jr., Samuel Averill and Edward Johnson, co-partners under the firm-name of Howe, Averill and Co., Benjamin F. Delano, Henry Pigeon, Frederick Chandler, Charles A. Cousins, Elisha H. Ryder, Maurice M. Pigott, Albert B. Lowe, William H. Hoskins, and Louisa Wilde, all of Boston, in the commonwealth of Massachusetts, and United States of America; Norton Pratt, of South Braintree, in the commonwealth aforesaid, and Luther A. Robey, of Nashua, in the State of New Hampshire, and United States of America, being with Charles P. Weaver, of Dorchester, in the commonwealth aforesaid, the sole owners of the American vessel Union Jack, hereinafter described in the following proportions, viz: the said Weaver, twenty sixty-fourths; the said Pratt, sixteen sixty-fourths; the said Robie, eight sixty-fourths; the said Gove and Choate, co-partners, four sixty-fourths; the said Pigeon, four sixty-fourths; the said Delano, Ryder, and Pigott, two sixty-fourths each; the said Howes, Johnson, and Averill, co-partners, one sixty-fourth, and the said Chandler, Cousins, Lowe, Hoskins, and Wilde, one sixty-fourth each, have appointed, constituted, and made, and in our stead and place put Charles P. Weaver aforesaid to be our true, sufficient, and lawful attorney for us, and in our names and stead, and to his own and our use, to sell and dispose of, at his discretion, the said American vessel Union Jack, whereof he, the said Weaver, is now master, her hull and body, with all the masts, sails, bowsprits, boats, anchors, cables, furniture, and other appurtenances thereto belonging, and at such price, and upon such terms of payment, as our said attorney may see fit; and in our names and in the name of each of us to sign, seal, acknowledge, and deliver all bills of sale, or such other instruments of conveyance as may be necessary or convenient for the due transfer of the title to said vessel and appurtenances, and to receive payment therefor in his own name and our behalf.

The said vessel Union Jack is registered at the port of Boston, in the district of Massachusetts, in the United States of America; has two decks, three masts, an elliptic stem, and a figure-head. She is a bark, and her length is $130\frac{8}{10}$ feet; her breadth $28\frac{4}{10}$ feet; her depth $16\frac{2}{10}$ feet; and she measures $482\frac{87}{95}$ tons.

Giving, and hereby granting, unto our said attorney full and whole strength, power, and authority in and about the premises, in our names to seal, execute, acknowledge, and deliver all necessary deeds and other instruments of conveyance or acquittances, and to take and use all due means, course, and process in the law for obtaining and

recovering all and singular the sum and sums of money, debts, goods, wares, merchandise, effects, and things whatsoever, which shall be due, payable, or in any way coming to us, in or by reason of the premises, and of recoveries and receipts thereof; and in our name to make, seal, and execute due acquittance and discharge: and for the premises to appear, and the persons of us the constituents to represent before any governor, judges, justices, officers, and ministers of the law whomsoever, in any court or courts of judicature, and there, on our behalf, to answer, defend, and reply unto all actions, causes, matters, and things whatsoever relative to the premises. Also to submit any matter in dispute in the premises to arbitration or otherwise; with full power to make and substitute one or more attorneys under him, our said attorney, and the same again at pleasure to revoke; and generally to say, do, act, transact, determine, accomplish, and finish all matters and things whatsoever relating to the premises as fully, completely, and effectually, to all intents and purposes, as we, the said constituents, if present, ought or might personally, although the matter should require more special authority than is herein comprised; we, the said constituents, ratifying, allowing, and holding firm and valid all and whatsoever our said attorney or his substitutes shall lawfully do, or cause to be done, in and about the premises, by virtue of these presents.

In witness whereof, we, the said constituents, have hereunto set our hands and seals this 7th day of March, A. D. 1863.

(Signed) ABIEL GOVE.
ELBRIDGE G. CHOATE.
OTIS C. HOWE.
JOHN HOWE, Jr.
SAMUEL AVERILL.
EDWARD JOHNSON.
BENJ. F. DELANO.
HENRY PIGEON.
FREDK. CHANDLER.

(Signed) CHARLES A. COUSINS.
ELISHA H. RYDER.
MAURICE M. PIGOTT.
ALBERT B. LOWE.
WM. H. HOSKINS.
LOUISA WILDE.
NORTON PRATT.
LUTHER A. ROBEY.

[30] *HER BRITANNIC MAJESTY'S CONSULATE,
States of Massachusetts and Rhode Island.

I, Francis Lousada, Her Britannic Majesty's consul for the States of Massachusetts and Rhode Island, do hereby certify that the undermentioned parties, viz. Abiel Gove, Elbridge G. Choate, Otis C. Howe, John Howe, jr., Samuel Averill, Edmund Johnson, Benjamin F. Delano, Henry Pigeon, Frederick Chandler, Charles A. Cousins, Elisha H. Ryder, Maurice M. Pigott, Albert B. Lowe, W. H. Hoskins, Louisa Wilde, Norton Pratt, and Luther A. Robey, personally appeared before me this day, and executed the within annexed document, and severally made oath that it was of their own free will, and for the purposes therein set forth.

In testimony whereof I have hereunto set my hand and affixed my seal of office at Boston, this 7th day of March, A. D. 1863.

(Signed) FRANCIS LOUSADA,
Her Britannic Majesty's Consul for Massachusetts and Rhode Island.

UNITED STATES OF AMERICA,
Commonwealth of Massachusetts, Suffolk, ss., City of Boston:

I, George H. Folger, a notary public, duly commissioned and sworn in and for the county aforesaid, do certify the foregoing to be a true and exact copy of an original power of attorney now before me.

In testimony whereof I have hereunto set my hand and notarial seal at Boston this 12th day of August, A. D. 1863.

(Signed) GEORGE H. FOLGER, *Notary Public.*

B.

PORT OF BOSTON AND CHARLESTON,
Custom-house, Boston, Collector's Office, June 26, 1863.

I hereby certify that according to the records in this office the bark Union Jack, of 482$\frac{8}{95}$ tons, was registered at this office December 16, 1862, and the following were her owners, namely: Charles P. Weaver, twenty sixty-fourths; Benjamin F. Delano, two sixty-fourths; Frederick Chandler, one sixty-fourth; Charles A. Cousins, one sixty-fourth; Elisha H. Ryder, two sixty-fourths; Maurice M. Pigott, two sixty-fourths; Albert B. Lowe, one sixty-fourth; William H. Hoskins, one sixty-fourth; Henry Pigeon, four sixty-fourths; Abiel Gove and Elbridge G. Choate, co-partners, six sixty-fourths, of said Boston; Norton Pratt, sixteen sixty-fourths, of South Braintree, State of Mas-

sachusetts; Luther A. Robie, eight sixty-fourths, of Nashua, State of New Hampshire. And the following transfers have been recorded since the date of the register: Abiel Gove and Elbridge G. Choate, by bill of sale, one sixty-fourth to Louisa Wilde, December 19, 1862; recorded December 22, 1862. Abiel Gove and Elbridge G. Choate, by bill of sale, one sixty-fourth to Howe, Averill and Co., December 19, 1862; recorded January 19, 1863. Abiel Gove and Elbridge G. Choate, by bill of sale, one-sixteenth to John Atkenson, March 6, 1863; recorded June 27, 1863.

And there is no mortgage or other lien on record against said vessel in this office.

Given under my hand and seal of office this 26th day of June, 1863.

(Signed) J. Z. GOODRICH, *Collector.*

C.—*Marine note of protest.*

CONSULATE OF THE UNITED STATES OF AMERICA, *Port of Bahia.*

On this 12th day of May, A. D. 1863, before me, Thomas F. Wilson, consul of the United States of America for Bahia and the dependencies thereof, personally appeared C. P. Weaver, master of the ship or vessel called the Union Jack, of Boston, of the burden of 483 tons or thereabouts, and declared that on the 28th day of March last past, he sailed in and with the said ship from the port of New York, laden with general cargo, and was captured and burned by the privateer Alabama on the 3d day of May, 1863, in latitude 9° 40′, longitude 32° 30′, and landed in this port by the said privateer Alabama on this day, hereby enters this note of protest accordingly to serve and avail him hereafter if found necessary.

(Signed) C. P. WEAVER, *Master.*

Attested:

(Signed) THOS. F. WILSON,
United States Consul.

CONSULATE OF THE UNITED STATES OF AMERICA,
Port of Bahia, Brazil, to wit:

By this public instrument of declaration and protest be it known and made manifest unto all to whom these presents shall come or may concern, that on the 12th day of May,
[31] *1863, before me, Thomas F. Wilson, consul of the United States of America for Bahia and the dependencies thereof, personally came and appeared C. P. Weaver, master of the ship or vessel called the Union Jack, of Boston, of the burden of 483 tons or thereabouts, who duly noted and entered with me, the said consul, his protest for the uses and purposes hereinafter mentioned, and now, on this day, to wit, the day of the date hereof, before me, the said consul, again comes the said C. P. Weaver, and requires me to extend this protest, and, together with the said C. P. Weaver also came George W. Coleman, mate, and George Loring and Alexander Crozier, seamen of and belonging to the said ship, all of whom being by me duly sworn, &c., did severally, voluntarily, freely, and solemnly declare, depose, and state as follows, that is to say: that these appearers, on the 28th day of March, in their capacities aforesaid, sailed in and with the said vessel from the port of New York, laden with general cargo, and bound to the port of Shanghai; that the said ship was then tight, staunch, and strong, had her cargo well and sufficiently stowed and secured, had her hatches well caulked and covered, was well and sufficiently manned, victualed, and furnished with all things needful and necessary for a vessel in the merchant service, and particularly for the voyage she was about to undertake; that nothing worthy of note on board occurred until the 3d day of May, when, in latitude 9° 40′ and longitude 32° 30′, with the wind at east and light, at 11.30 a. m. saw a sail on the port bow, about ten miles distant, bearing down upon us. At 1 p. m. made out that the sail was a steamer, and evidently intent upon boarding us. Kept the vessel off two points and endeavored to avoid the steamer, but she came up with us rapidly, and about this time displayed the flag of the United States of America, and as soon as we displayed ours she immediately hauled hers down and signaled us to heave-to. It being now quite evident that she was the privateer Alabama, and that we were entirely in their power, backed the main-yard. Immediately afterward a boat came alongside and informed us that we were a prize to the confederate steamer Alabama, the steamer setting the so-called Confederate States flag as the boat came alongside of us. After removing a part of our wearing apparel we were ordered on board the steamer, and at about 7 p. m. the bark was set on fire, and the steamer hauled by the wind to the eastward, taking one of the bark's boats with her. At 9 a. m. all of the masts were gone and the hull even enveloped in flames. At daylight next morning nothing of the vessel could be seen. On the 12th of May were landed at the port of Bahia. And these said appearers, upon their oaths aforesaid, do further declare and say that during the said voyage they, together with the officers of the said

ship's company, used their utmost endeavors to preserve the said vessel and cargo from all manner of loss, damage, or injury. Wherefore the said C. P. Weaver, master, hath protested, and by these presents I, the said consul, at his special instance and request, do publicly and solemnly protest against all and every person whom it doth or may concern, and against the winds and waves and billows of the sea, and against all and every accident, matter, and thing had and met with aforesaid, whereby, and by reason whereof, the said vessel or cargo already has, or hereafter shall appear to have suffered or sustained damage or injury; and do declare that all losses, damages, costs, charges, and expenses that have happened to the said vessel or cargo, or to either, are and ought to be borne by those to whom the same by right may appertain, by way of average or otherwise, the same having occurred as before mentioned, and not by or through the insufficiency of the said vessel, her tackle or apparel, or default or neglect of this appearer, his officers, or any of his mariners.

Thus done and protested in the port of Bahia, this 14th day of May, A. D. 1863. In testimony whereof these appearers have hereunto subscribed their names, and I, the said consul, have granted to the said master this public instrument, under my hand and the seal of this consulate, to serve and avail him and all others whom it doth or may concern, as need and occasion may require.

(Signed) THOS. F. WILSON. *United States Consul.*
C. P. WEAVER, *Master.*
GEO. W. COLEMAN, *Mate.*
GEORGE C. LORING, *Seaman.*
ALEXANDER CROSIER, *Seaman.*

I, Thomas F. Wilson, consul of the United States of America for Bahia and dependencies thereof, do hereby certify that the foregoing marine note of protest and extended protest, Nos. 1 and 2, are true and faithful copies of the originals filed in this consulate, the same having been carefully examined, word for word and figure for figure.

Given under my hand and the seal of this consulate this 16th day of May, A. D. 1863.

(Signed) THOMAS F. WILSON,
United States Consul.

[32] "SUFFOLK, *ss:*

I, George H. Folger, a notary public, duly commissioned and sworn, do certify the foregoing to be a true and exact copy of an original consular copy of protest now before me.

In testimony whereof I have hereunto set my hand and notarial seal at Boston, this 23d day of July, A. D. 1863.

(Signed) GEORGE H. FOLGER,
Notary Public.

D.

MARINE INSPECTION OFFICE, 76 STATE STREET.
Boston, June 27, 1863.

I hereby certify that the bark Union Jack, of Boston, was built at East Boston; launched November, 1862; 482 tons burden; was double deck; her frame was New Hampshire white oak, plank oak; upper-deck beams yellow pine; lower-deck beams oak; had full sets of hackmatack hanging knees under both decks; ceiling between decks was yellow pine; ceiling in the lower hold oak; was most thoroughly fastened with iron and copper, and through locust treenails; was in all respects a very superior vessel; and when she left this port was worth $32,000; was sheathed with yellow metal to 11 feet at New York in March, 1863, which, together with other additional expenses, at that time amounted to $3,000, making her full value when captured and destroyed $35,000.

(Signed) E. C. DAVIS,
Marine Inspector for the Boston Associated Board of Underwriters.

E.

I certify this to be a true copy of original charter-party.

(Signed) GEORGE A. FOLGER.

This charter-party, made the 28th day of February, A. D. 18—, between Captain C. P. Weaver, for himself and owners of the bark Union Jack, of Boston, of the burden

of 483 tons, or thereabouts, register measurement, now lying in the harbor of New York, of the first part; and George A. Patten, of the second part, witnesseth that the said parties of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, do covenant and agree to the freighting and chartering of the said vessel unto the said party of the second part for a voyage from New York to Shanghai, China, on the terms following, that is to say:

1. The said parties of the first part do engage that the said vessel, in and during the said voyage, shall be kept tight, staunch, well fitted, tackled, and provided with every requisite, and with men and provisions necessary for such voyage.

2. The said parties of the first part do further engage that the whole of said vessel (with the exception of the cabin, the deck, and the necessary room for the accommodation of the crew, and the storage of the sails, cable, and provisions) shall be at the sole use and disposal of the said party of the second part during the voyage aforesaid; and that no goods or merchandise whatever shall be laden on board otherwise than from the said party of the second part, or his agent, without his consent, on pain of forfeiture of the amount of freight agreed upon the same.

3. The said parties of the first part do further engage to take and receive on board the said vessel, during the aforesaid voyage, all such lawful goods and merchandise as the said party of the second part, or his agents, may think proper to ship.

And the second party of the second part, for and in consideration of the covenants and agreements to be kept and performed by the said parties of the first part, does covenant and agree with the said parties of the first part to charter and hire the said vessel as aforesaid, on the terms following, that is to say:

1. The said party of the second part does engage to provide and furnish to said vessel good and sufficient cargo for ballast.

2. The said party of the second part does further engage to pay to the said parties of the first part, or their agent, for the charter or freight of the said vessel during the voyage aforesaid, in manner following, that is to say:

[33] *The sum of $3,000 legal-tender notes, or their equivalent, on signing bills of lading in New York, free of all commission or brokerages, that is to say, said sum to be net to them; also 3,000 Mexican dollars, less 2½ per cent., free of all commissions or brokerages, that is to say, said sum to be net to them in three days after completion of delivery of cargo in good order, according to bills of lading, bills of lading to be signed without prejudice to charter-party, gross accounts of freight payable in Shanghai by bills of lading, not to be less than 3,000 Mexican dollars, or their equivalent.

It is further agreed between the parties to this instrument that the said party of the second part shall be allowed for the loading and discharging of the vessel, at the respective ports aforesaid, lay-days as follows, that is to say, remaining, except Sundays, twenty-five lay-days in New York, and ten lay-days in Shanghai, unexpired lay-days in New York to ensue to the benefit of the second part, that is to say, thirty-five remaining, except Sundays, lay-days all sound. And in case the vessel is longer detained, the said party of the second part agree to pay to the said party of the first part demurrage at the rate of $35 per day for the first five days, and $50 per day, day by day, for every day so detained, provided such detention shall happen by default of the said party of the second part or his agent.

It is also further understood and agreed that the cargo or cargoes shall be received and delivered alongside of the vessel, within reach of her tackles, or according to the customs at the ports of loading and discharging. It is also further understood and agreed that this charter shall commence when the vessel is ready to receive cargo at the place of lading, and notice thereof is given to the party of the second part or his agent.

To the true performance of all and every of the foregoing covenants and agreements, the said parties of the first part do hereby bind themselves, their heirs, administrators and assigns, (especially the said parties of the first part, the said vessel, her freight, tackle, and appurtenances; and the said party of the second part, the merchandise to be laden on board,) each to the other, in the penal sum of $6,000.

In witness whereof the said parties have hereunto interchangeably set their hands and seals, the day and year above within.

(Signed) GEO. A. PATTEN.
C. P. WEAVER.

Delivered in the presence of—
(Signed) JAS. HARTUNNIS.

Received on account of this charter-party, as per agreement therein expressed, $5,000.
$5,000.
(Signed) C. P. WEAVER.
NEW YORK, *March* 18, 1863.

Received on account of this charter-party, as per agreement therein expressed, Mr. George A. Patten's draft on Messrs. Bull, Baden & Co., of Shanghai, for the sum of 3,000 Mexican dollars, less 2½ per cent.

300 Mexican dollars, less 2½ per cent.

(Signed) C. P. WEAVER.

Lay-days in New York, nineteen, leaving sixteen remaining lay-days, Sundays excepted, to be used in Shanghai.

(Signed) GEORGE A. PATTEN.
C. P. WEAVER.

One additional lay-day having been used in New York, making twenty lay-days in all, leaving fifteen remaining lay-days, Sundays excepted, to be used in Shanghai.

(Signed) GEORGE A. PATTEN.
C. P. WEAVER.

UNITED STATES OF AMERICA,
Commonwealth of Massachusetts, Suffolk, ss:

I, George H. Folger, a notary public, duly commissioned and sworn in and for the county aforesaid, certify the foregoing to be a true and exact copy of an original bill of lading now before me.

In testimony whereof I have hereunto set my hand and notarial seal, at Boston, this 23d day of July, A. D. 1863.

(Signed) GEORGE H. FOLGER, *Notary Public.*

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[34] *F.

Property on board bark Union Jack, belonging to Charles P. Weaver, together with expenses incurred, and loss experienced in consequence of the destruction of said bark by the confederate steamer Alabama.

Nautical instruments		$450
Nautical books		100
Nautical charts		125
Private library		150
Clothing for self		175
Clothing for wife and children		200
		1,200
Ship-stores:		
15 barrels beef	$225	
10 barrels pork	150	
25 barrels flour	250	
4,000 pounds bread	190	
Small-stores	385	
		1,200
Expense of passage and other amounts, coming home, £45, and exchange		320
Loss by breaking up of business and destruction of vessel and other property		5,000
		7,720

(Signed) C. P. WEAVER.
BOSTON, *July* 23, 1863.

UNITED STATES OF AMERICA.
Commonwealth of Massachusetts, Suffolk, ss:

Before me, George Howland Folger, a notary public, duly commissioned and sworn, in and for the county aforesaid, personally appeared Charles P. Weaver, and made solemn oath of the loss of property as set forth in the foregoing statement, and in the manner as set forth in the accompanying declaration.

In testimony whereof I have hereunto set my hand and notarial seal, at Boston, this 23d day of July, A. D. 1863.

(Signed) GEORGE A. FOLGER, *Notary Public.*

[Inclosure 3 in No. 18.]

Protest of George Hagar.

UNITED STATES OF AMERICA,
State of New York, City of New York, ss:

To all people to whom these presents shall come or may concern:

I, Wm. Aug. Walker, a public notary, in and for the county of Queens, and State of New York, by letters-patent, under the great seal of said State, duly commissioned and sworn, residing in the said county of Queens, and practicing in the city of New York and State aforesaid, send greeting:

Know ye, that on the 17th day of October, in the year of our Lord 1862, before me appeared George Hagar, master of the ship called the Brilliant, of New York, and noted in due form of law with me, the said notary, this protest for the uses and purposes hereafter mentioned, and now on this day, to wit, the day of the date hereof, before me the said notary, at the city of New York aforesaid, again comes the said Hagar, and requires me to extend his protest, and together with the said Hagar also comes Hamilton Bingham, first officer, belonging to the aforesaid vessel, all of whom being by me duly sworn on the Holy Evangelists of Almighty God, voluntarily, freely, and solemnly do declare and depose as follows; that is to say, that on the 13th day of September last, he, the said Hagar, set sail and departed in and with the said vessel, as master thereof, from New York, having on board the said vessel a cargo of grain, flour, &c., and bound for the port of London; that the said vessel was then stout, staunch, and strong; had her cargo well and sufficiently stowed and secured; were well masted, manned, tackled, victualed, appareled, and appointed, and was in every respect fit for sea and the voyage she was about to undertake. Got under way on the day of the date above mentioned, and in tow of a steamer and in charge of a pilot proceeded to sea. At 10 a. m. were outside Sandy Hook, discharged the pilot and steamboat, and made sail, wind north, and cloudy, threatening weather. Pursued the voyage from this date with variable winds and weather, making and trimming sail as occasion required, the pumps being properly attended to, the ship's company being engaged in the usual routine of duty, and without any occurrence worthy of especial mention herein, until October 3d, which day comes in with strong breezes and cloudy weather, wind from the northeast and squally, at midnight the same, at daylight more moderate, made sail; a large ship in sight to windward and standing on the same tack as ourselves, about a mile distant. This ship we afterward learned to be the Emily Farnham, of Portsmouth, New Hampshire, bound to Liverpool, from New York. At 8 a. m. saw a steamer on the weather bow, about five miles distant, heading to the westward. At
9 a. m. she hoisted the St. George's Cross and fired a gun for the Emily Farn-
[35] ham to heave-to, *and immediately afterward hoisted the flag of the so-called Confederate States of America. The ship hove-to, and a boat from the steamer was sent to board her; the steamer then wore round and made all sail in chase of us. During this time we had all sail set and were making every effort to escape. The steamer gained on us, and at 11.30 a. m. she had gained enough to bring us within range. She then fired a gun for us to heave-to. We did so, when she sent a boat aboard of us with two officers and a boat's crew all armed. The boarding officer demanded the surrender of our papers, and claimed us a prize to the confederate steamer Alabama, Captain Semmes. Captain Hagar was then ordered to go on board the steamer with all the ship's papers, which he did, and on his arrival there was ordered into the cabin. There, himself and his papers were examined by the captain of steamer, who decided that the cargo was not on foreign account, because there appeared nothing in the ship's papers to prove it, though this deponent, George Hagar, earnestly protested that it undoubtedly was, and claimed for it protection on that account, but without avail; and he was peremptorily ordered to sign a document naming the owners of the ship and declaring that he had no knowledge of the cargo being on foreign account, after doing which he was ordered on board his vessel to assist with his crew in getting out the ship's boats and such stores and cargo as the confederate captain wanted for the use of his steamer; and further orders were given to bring but one bag of clothes for each man of the crew, at the same time saying they were going to burn the ship. Himself and crew being prisoners and under guard, were compelled to do as they were ordered, after which they went alongside the steamer, from whence they were transferred, together with the captains and crews of several vessels previously captured and destroyed by the steamer, to the ship Emily Farnham, which vessel lay hove-to a few cables' length distant, having been captured as hereinbefore mentioned, and whose captain was at that time on board the steamer undergoing examination with his papers. The result of that examination was that the cargo of the Emily Farnham being admitted to be the property of English subjects, that ship and cargo were released from custody. On board the Emily Farnham these deponents, together with the balance of the crew, were ordered and compelled to sign a parole under threats of irons and imprisonment if they refused.

During all this time the crew of the Alabama were busy plundering the Brilliant of everything that time would allow them to carry away. At 6 p. m. the ship Brilliant was set on fire, and at 7 o'clock, from the deck of the Emily Farnham, we saw her enveloped in flames. She continued to burn all night, and at daylight we saw another ship near the wreck, no doubt attracted by the light, and the steamer standing for her; a light breeze sprang up and we lost sight of both vessels during the morning. The Emily Farnham proceeded on her course toward Liverpool, and on the 6th following spoke the brig Golden Lead, of Thomaston, Maine, bound from the island of Jersey to New York, the master of which vessel kindly took these deponents and several others on board his vessel and brought us to New York, where we arrived on the 16th instant; the balance of the Brilliant's crew proceeded toward Liverpool in the Emily Farnham. And these deponents further state that when ordered by the captain of the confederate steamer to do the several acts hereinbefore related, they were threatened with irons and imprisonment if they refused to comply. And the said master further says that, as all the damage and injury which already has or may hereafter appear to have happened or occurred to the said vessel or her said cargo has been occasioned solely by the circumstances hereinbefore stated, and cannot and ought not to be attributed to any insufficiency of the said vessel or default of him this deponent, his officers, or crew, he now requires me, the said notary, to make his protest and this public act thereof, that the same may serve and be of full force and value as of right shall appertain.

And therefore the said master doth protest, and I, the said notary, at his special instance and request, do by these presents publicly and solemnly protest against winds, weathers, and seas, and against all and every accident, matter, and thing had and met with as aforesaid, whereby, or by means whereof, the said vessel or her cargo already has or hereafter shall appear to have suffered or sustained damage or injury, for all losses, costs, charges, expenses, damages, and injury which the master, owner, or owners of the said vessel, or the owners, freighters, or shippers of her said cargo, or any other person or persons interested or concerned, and either already have or may hereafter pay, sustain, incur, or be put upon, by or on account of the premises, or for which the insurer or insurers of the said vessel, or her cargo, is or are respectively liable to pay or make contribution or average according to custom, on their respective contracts or obligations; and that no part of such losses and expenses already incurred, or hereafter to be incurred, do fall on him the said master, his officers, or crew.

Thus done and protested in the city of New York, the 18th day of October, 1862.

[36] * In testimony whereof, as well the said appearers as I the notary have subscribed these presents, and I have also caused my seal of office to be hereunto affixed the day and year last above written.

(Signed) GEORGE HAGAR, *Master.*
HAMILTON BINGHAM, *First Mate.*

(Signed) WM. AUG. WALKER, *Notary Public.*

CITY AND COUNTY OF NEW YORK, *ss:*

I, William Aug. Walker, a public notary in and for the county of Queens and State of New York, duly commissioned and sworn, and dwelling in said county, do hereby certify the foregoing to be a true and exact copy of an original protest on record in my office in the city of New York.

In testimony whereof I have hereunto set my hand and seal, October 20, 1862.

(Signed) WM. AUG. WALKER.

[37] *Manifest and freight list of American ship Brilliant, Captain George Hagar, from New York for London.*

No. of bills of lading.	Marks.	Number.	Packages.	Weight.	Measure.	Rate of freight, sterling.
				Pounds.	*Gallons.*	
1	J. G.	.....	37 casks lard oil	.....	6,088	45*s.* per ton of 252 galls.
2	(C)	.....	85 barrels of flour	.....	.....	4*s.* 6*d.* per barrel
3	L	.....	500 barrels of flour	.....	.....	4*s.* 6*d.* per barrel
4	(R) H	1-25	24 hogsheads tallow	31,052	.....	45*s.* per ton
5	(C)	.....	200 barrels zinc oxide	48,400	.....	45*s.* per ton
6	L	.....	1,714 bags, containing 4,879 bushels wheat.	.....	.....	14*d.* per barrel
7	(T)	.....	921 bags, containing 2,434 40-60 bushels wheat.	.....	.....	14*d.* per barrel
8	D	.....	146 bags, containing 418 52-60 bushels wheat.	.....	.....	14*d.* per barrel
9	N	.....	2,339 bags, containing 6,607 39-60 bushels wheat.	.....	.....	14*d.* per barrel
10	"3" "19"	.....	2,293 bags, containing 6,568 17-60 bushels wheat.	.....	.....	14*d.* per barrel
11	(L) (S)	.....	43 tierces of beef	.....	.....	9*s.* per tierce
12	Various.	.....	30 boxes bacon, and 9 hhds. porkheads	22,695	.....	45*s.* per ton
		.....	(T) 8 tierces middles	.....	.....	9*s.* 9*d.* per ton
		.....	26 barrels middles	.....	.....	6*s.* 6*d.* per ton
13	(A)	.....	50 barrels lard oil	.....	2,018½	45*s.* per ton
14	(H) H	.....	100 barrels flour	.....	.....	4*s.* 6*d.* per barrel
15	(X)	.....	796 barrels flour	.....	.....	4*s.* 6*d.* per barrel
16	J.M.C. M. C.& M.P.	.....	242 bags corn	.....	.....	50*s.* per ton
17	H	.....	2,324 bags, containing 6,604 7-14 bushels wheat.	.....	.....	14*s.* 4*d.* per bushel
18	(5)	.....	2,000 barrels flour	.....	.....	4*s.* 6*d.* per barrel
19	(C)	.....	4 casks zinc oxide	3,651	.....	47*s.* 6*d.* per ton
20	.....	.....	7,000 2-10 hhd. staves	.....	.....	70*s.* per 1,000
21	"21"	.....	968 bags containing 2,846 bushels wheat.	.....	.....	14½*d.* per bag
22	Various.	.....	1,750 barrels flour	.....	.....	4*s.* 6*d.* per barrel

No. of bills of lading.	Freight.			Primage.			Shippers.	Consignees.	Total freight.		
	£	*s.*	*d.*	£	*s.*	*d.*			£	*s.*	*d.*
1	54	7	2	2	14	4	Amos Bigland	Order	57	1	6
2	19	2	6		19	2	Richard C. Gurney	do	20	1	8
3	112	10	0	5	12	6	Samuel C. Paxton, Sons & Co.	do	118	2	6
4	31	3	10	1	11	2	Ruprecht & Forstner	Rosing Brothers & Co	32	15	0
5	51	6	4	2	11	4	John Jewett & Sons	Lehigh Zinc Company	53	17	8
6	284	12	2	14	4	7	Mark Mandeluck & Co	Order	298	16	9
7	147	17	1	7	7	10	do	do	155	4	11
8	24	8	8	1	4	5	do	do	25	13	1
9	385	8	11	19	5	5	Knauth, Nachod & Kuhne	Wm. Brandts, Sons & Co	404	14	4
10	383	3	0	19	3	2	Ferdinand F. Dufais	Order	402	6	2
11	19	7	0		19	4	Thomas Lockhardt	do	20	6	4
12	22	15	11								
	3	12	0	1	19	10	do	do	36	11	9
	8	9	0								
13	18	0	5		18	0	Mason & Wilkie	do	18	18	5
14	22	10	0	1	2	6	W. W. Smith & Co	do	23	12	6
15	179	2	0	8	19	1	Munzinger & Pitzspice	Roderanchi, Sons & Co	188	1	1
16	41	5	6	2	1	3	H. Sautter & Wierum	Edmund Schluser & Co	43	6	9
17	399	0	0	19	19	0	Harmony, Nephew & Co	Cavan, Lubbock & Co	418	19	0
18	450	0	0	22	10	0	do	C. de Municha & Co	472	10	0
19	3	17	5		3	12	John Jewett & Sons	Lehigh Zinc Company	4	1	3
20	25	4	0	1	5	3	Dutton & Townsend	Order	26	9	3
21	171	19	1	8	11	11	H. L. Routh & Sons	Shipper's order	100	11	0
22	393	15	0	19	13	9	A. H. Solomon	J. Brandon & Co	413	8	9
	3,252	17	0	162	12	8			3,415	9	8

(Signed) FUNCH, MEINKE & WENDT. (for AXEL GODECKE.)

New York, September 19, 1862.

[38] *Ship Brilliant.—Statement of facts.*

Ship sailed from New York September 13, 1862, bound to London, loaded with flour, grain, &c.

The freight, valued at $18,000, was insured in the Atlantic Mutual Insurance Company, of New York. On the 3d day of October the Brilliant was captured by the steamer Alabama, Semmes, captain, and burned. The Alabama, while pursuing the Brilliant, carried the confederate flag.

The owners of the freight, on payment of the subscription under the policy assigned and set over all claims of loss of freight to the insurance company.

Claim.

The Atlantic Mutual Insurance Company claim that the English government should make good to them the damage they have sustained as per above; for that in violation of international law, they being neutral, have permitted the Alabama to be built and equipped in their ports for one belligerent to be used in cruising against the commerce of another.

Agreement.

These presents, made and concluded the 22d day of October, 1862, between J. Atkins & Co., of the first part, and the Atlantic Mutual Insurance Company, of the second part:

Whereas, by a certain special policy of insurance, No. 5574, bearing date September 13, 1862, the said party of the second part became the assurers of the said party of the first part, upon the freight, the good ship called the Brilliant, whereof ——— ——— was master, ———, New York to London:

And whereas detriment and loss having occurred to the said insured property by reason of some of the perils in the said policy mentioned or described, the said party of the first part hath ceded and abandoned to the said party of the second part the said insured property, and all the right, title, interest, claim, and demand of ——— ———, the said party of the first part, of, in, and to the same. And whereas the said party of the second part have accepted the said cession and abandonment, and have, therefore, paid to the said party of the first part the sum of $18,000 in full satisfaction of the sum by the said policy insured, and of all things in the said policy contained, on the part of the said company to be performed: Now, therefore, this indenture witnesseth, that the said party of the first part, in consideration of the said sum of $18,000, so as aforesaid paid to ——— ——— by the said party of the second part, the receipt whereof is hereby acknowledged, hath bargained, sold, assigned, transferred, ceded, abandoned, and set over, and by these presents doth bargain, sell, assign, transfer, cede, abandon, and set over unto the said party of the second part, and their successors and assigns, the aforesaid freight, and all the right, title, interest, trust, claim, and demand of the said party of the first part, therein and thereto.

To have and to hold, recover, receive, and take the same freight unto the said party of the second part to the only proper use and benefit of the said party of the second part and their successors, of and from all actions and suits, and causes of actions and suits, promises, agreements, losses, damages, charges, expenses, costs, claims, and demands whatsoever, both at law and in equity, by reason or in virtue of the policy of insurance herein above mentioned. And the better to enable the said party of the second part to recover and receive the hereby assigned and ceded premises, the said party of the first part hath made, ordained, constituted, and appointed, and by these presents doth make, ordain, constitute, and appoint the said party of the second part, and their successors, the attorneys irrevocable of the said party of the first part, in the name of the said party of the first part, but to and for the proper use and benefit of the said party of the second part, and their successors and assigns, by all lawful ways and means to ask, demand, sue for, and recover and receive the said freight, and all moneys thence arising; and all damages of and concerning the same, of and from all and every king, prince, potentate, state, person or persons whatsoever, and for the purposes aforesaid, in the name or on behalf of the said party of the first part, but at the proper cost and charges of the said party of the second part, and their successors and assigns, to appear, prosecute, and plead in all courts and places whatsoever. And all suits, disputes, or differences in any wise respecting the promises to conform and agree, or refer to arbitration, upon such terms and principles, and in such manner and
[39] form, as to the said party of the second part, and their successors and assigns, shall appear fit and expedient. And all needful acquittance, discharges, receipts, deeds, and writings touching the premises, in the name, place, and stead of the said party of the first part, from time to time, to make, execute, and deliver, and generally to do

and perform all lawful acts, matters, and things whatsoever touching the premises in as full and ample a manner as the said party of the first part, if personally present, might or could do, or as if more special authority were given them. And one or more attorney or attorneys under them, the said party of the second part, for the purposes aforesaid, from time to time, appoint, and at their pleasure revoke.

In witness whereof, the said party of the first part hath to these presents set his hand and seal, and the said party of the second part have also to these presents caused their seal to be affixed, and the same to be subscribed by their president or their vice-president, and countersigned by their secretary, on the day and in the year first above written

(Signed) J. ATKINS.

Signed and delivered in the presence of—
(Signed) E. H. DAVIS.

Mr. Jones to Mr. Seward.

OFFICE OF THE ATLANTIC MUTUAL INSURANCE COMPANY,
New York, October 1, 1863.

SIR: I inclose herewith to be filed proofs of loss in the case of the ship Brilliant, as follows:

1. The protest;
2. Freight list;
3. Assignment to this company of the claim for damages.

I append thereto a short statement of facts, with a brief claim for damages against the British government.

Should any further proofs be required I shall be happy to furnish them.

Very respectfully, &c.,
(Signed) J. D. JONES, *President.*

UNITED STATES OF AMERICA, *State of New York, ss:*

By this public instrument be it known to all whom the same doth or may in anywise concern, that I, William Aug. Walker, a public notary in and for the county of Queens, and State of New York, by letters-patent under the great seal of the said State, duly commissioned and sworn, and residing in the county of Queens, do hereby certify that the annexed is a true and correct copy of the original affidavit on file in my office in the city of New York.

In testimony whereof I have subscribed my name, and caused my notarial seal to be affixed, November 8, 1862.

(Signed) WM. AUG. WALKER, *Notary Public.*

CITY AND COUNTY OF NEW YORK, *State of New York, ss:*

On the day of the date hereof, before me, William Aug. Walker, a public notary in and for the State of New York, duly and by lawful authority admitted, commissioned, and sworn, personally appeared George Hagar, who being by me duly sworn, deposes and says, that he was master of the ship Brilliant, of New York, on her late undertaken voyage to London, when she was captured by the English or confederate steamer Alabama, or 290, and burned, a more particular account of which will be found in his protest extended before William Aug. Walker, notary public in the city of New York, under date of 18th of October last past, in which it is stated that this deponent "was peremptorily ordered to sign a document naming the owners of the ship, and declaring that he had no knowledge of the cargo being on foreign account; that though he was compelled to sign this document, he nevertheless called the attention of the master of the steamer to the fact that the ship's bills of lading were indorsed on foreign account," meaning that the cargo belonged to citizens of foreign states, and protested against the destruction of his ship and cargo for that reason, but no notice was taken of it by the master of the steamer, who would not listen to the earnest entreaties of this deponent to spare his ship and cargo; and when this deponent again told the master of the steamer that the bills of lading were indorsed "on foreign account," he replied to this deponent in the following language: "That is the second time you have told
[40] me that; do you suppose me to be a d——d *fool?*" That the manner of the master of the steamer was overbearing and insolent in the extreme, and it was at great risk of the personal safety, if not of the life of the deponent, that he so strenuously insisted upon his ship and cargo being released. That he did so nevertheless, and was threatened with irons and imprisonment to intimidate him. That when he

signed the document to which reference has been made herein, to the effect that he had no knowledge of the cargo being on foreign account, he said at that time to the captain of the steamer that though he had no actual knowledge as to that, but believed it was because such was indorsed on the face of the bills of lading; and in reply to this the master of the steamer told this deponent that there was no consular certificate to that effect; that he wanted none of his suppositions, he wanted facts only.

(Signed) GEORGE HAGAR.

Sworn to before me, this 8th day of November, 1862. In testimony whereof I have hereunto set my hand and seal.

(Signed) WM. AUG. WALKER, *Notary Public.*

On the day and year first above written also appeared before me Hamilton Bingham, who being duly sworn, deposes and says, that he was first mate of the aforesaid ship Brilliant, on the said voyage; that he has read the contents of the foregoing affidavit of the master, and that the same is true and correct to the best of his knowledge and belief, always excepting such stated conversations as occurred between Captain Hagar and the captain of the confederate steamer not held in the presence of this deponent.

(Signed) HAMILTON BINGHAM.

Sworn to before before me, November 8, 1863. In testimony whereof I have hereunto set my hand and seal of office.

(Signed) WM. AUG. WALKER, *Notary Public.*

Messrs. Atkins & Co. to Mr. Seward.

NEW YORK, *September* —, 1863.

SIR: We respectfully lay before you the inclosed documents:

1. Our memorial in relation to the destruction of the ship Brilliant by a steamer calling herself "the Confederate States man-of-war Alabama."
2. A certified copy of Captain Hagar's marine protest.
3. A certified copy of ship's register.
4. A certified copy of the crew list.
5. Affidavit of Captain Hagar.

These documents prove that the ship was destroyed by fire; that she is an American ship, and she was sailing according to the laws of the United States.

We respectfully ask that such action may be taken in the premises as shall seem, in your judgment, to recover from Her Britannic Majesty's government, $75,000 for the loss of our ship, and £3,415 9*s.* 8*d.* sterling, the amount of freight she had on board, according to the freight list.

We are, &c.,

(Signed) JOSHUA ATKINS & CO.

To the Hon. William H. Seward, Secretary of State, Washington, D. C.:

The memorial of Joshua Atkins and Edwin Atkins, copartners, merchants, and citizens of the United States, residing in the city of Brooklyn, respectfully represents:

That they, together with George Hagar, master mariner, of Boston, Massachusetts, also a citizen of the United States, are the sole owners of the late ship Brilliant, of New York.

That the said ship Brilliant being a legally registered American vessel, equipped according to the laws of the United States, sailed from the port of New York on the 13th of September, 1862, laden with a cargo consisting of grain, flour, &c., bound to the port of London, in Great Britain.

The said cargo belonged to various shippers, and each bill of lading had indorsed on it "on foreign account," and the undersigned had no personal interest therein other than the customary lien for the freight thereof.

That on the 3d October following she had proceeded on her voyage as far as latitude 40° north, longitude 50° 30′ west, when she was boarded and declared to be a
[41] prize to a *vessel calling herself "the Confederate States man-of-war steamer Alabama," who immediately took possession of said ship, against the strong and often repeated remonstrances of George Hagar aforesaid, her master on the voyage; and by order of one calling himself the captain of said steamer (Semmes) there were taken from the ship Brilliant sundry boats, and such stores and cargo as the so-called captain wanted for the use of his vessel; and the confederate crew plundered everything that time would allow them to carry away. That Captain Hagar,

his officers, and crew were ordered to leave their ship, and were put on board the ship Emily Farnham, which vessel lay hove-to, a few cables' length from the said steamer Alabama, a prize to her.

At 6 o'clock p. m. the said ship Brilliant was set on fire by order of the said Semmes, and was totally destroyed with all on board.

The ship Emily Farnham was released, and proceeded on her course to Liverpool, whither she was bound, but on the 6th October Captain Hagar, his officers, and part of his crew were transferred to another vessel, spoken at sea, bound to this port, and were landed in New York on 16th of same month.

And now we, Joshua Atkins and William Atkins, and on behalf of George Hagar, sole owner of said ship, do enter our solemn protest against the destruction thereof, and do by these presents demand of the government of Great Britian full reparation for the same, in the sum of $75,000 of the coin of the United States, being the value of said ship, and £3,415 9*s.* 8*d.* sterling, the amount of freight she had on board at the time of her destruction.

Your memorialists would further represent that they make and predicate this protest and demand upon the facts therein stated, which can be verified whenever it shall be found necessary so to do. Said vessel calling herself "the Confederate States man-of-war Alabama" is an English vessel and no other. She was built at the port of Birkenhead, and was allowed to leave British waters, although information as to her character, and the intention to use her as a privateer to prey upon the commerce of the United States, then and now at peace with Great Britain, was lodged with the British government. The said steamer Alabama (then called the 290,) was allowed to leave said waters upon giving a bond to return, which it was well known was intended to be forfeited. That she did leave the waters of Great Britain the latter part of July, 1862, under the protection of the British flag and manned by British subjects. That had the American man-of-war Tuscarora, or any other legally authorized man-of-war of the United States seized her after leaving said British waters, she would have claimed her British ownership and her flag as her protection. But said steamer was allowed to leave port under the pretense of making a trial-trip, and has never been in any port of the so-called Confederate States so as to change her flag, or to be otherwise than a British vessel.

Your memorialists would further represent that said steamer, after thus fraudulently leaving the port of Great Britain against the Queen's proclamation of neutrality, repeatedly visited or came within the jurisdiction of certain British islands in the Atlantic Ocean, when and where it was well known, and patent to the world, that she had destroyed American vessels on the high seas, and instead of being seized and detained by the British government, as they were in duty bound to do, was allowed every facility for obtaining supplies and advice, and to resume her piratical cruise; that no examination was ever made by said British government through their constituted agents and officers, as to the manning of said steamer by British subjects, or of the prostitution of the British flag, by thus giving protection to the piracies committed under its folds; and that she was and has continued to be, until after the capture of your memorialist's ship, principally manned by said British subjects.

In view of these matters, and of others which may be made to appear, your memorialists do now and forever enter their solemn protest against the British government and people, as willing parties, negligently culpable in the destruction of their property upon the high seas, and thus in fact violating the proclamation of the Queen by building and manning said steamer, and then allowing her to continue her depredations.

And they ask, through the Government of the United States, that a proper representation may be made of their loss, that in the end due reparation may be made to them by the said government of Great Britain, or that the Government of the United States may assume the same as one of the governmental obligations to protect the rights of their citizens thus wantonly violated.

And as in duty bound will ever pray.

(Signed) JOSHUA ATKINS.
EDWIN ATKINS.

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[42] No. 19.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *October* 26, 1863.

SIR: I have had the honor to receive your letter of the 23d instant.

In that letter you inform me that you are instructed to say that the Government of the United States must continue to insist that Great

Britain has made itself responsible for the damages which the citizens of the United States sustain by the depredations of the vessel called the Alabama.

But toward the conclusion of your letter you state that the Government of the United States are not disposed to act dogmatically or in a spirit of litigation; that they desire to maintain amity as well as peace; that they fully comprehend how unavoidably reciprocal grievances must spring up from the divergence of the policy of the two countries in regard to the present insurrection. You add further on, that the United States frankly confess themselves unwilling to regard the present hour as the most favorable to a calm and candid examination by either party of the facts or the principles involved in cases like the one now in question.

With this declaration Her Majesty's government may well be content to await the time when a calm and candid examination of the facts and principles involved in the case of the Alabama may, in the opinion of the Government of the United States, usefully be undertaken.

In the mean time, I must request you to believe that the principle contended for by Her Majesty's government is not that of commissioning, equipping, and manning vessels in our ports to cruise against either of the belligerent parties—a principle which was so justly and unequivocally condemned by the President of the United States in 1793, as recorded by Mr. Jefferson in his letter to Mr. Hammond of the 13th of May of that year.

But the British government must decline to be responsible for the acts of parties who fit out a seeming merchant-ship, send her to a port or to waters far from the jurisdiction of British courts, and there commission, equip, and man her as a vessel of war.

Her Majesty's government fear that if an admitted principle were thus made elastic to suit a particular case, the trade of ship-building, in which our people excel, and which is to great numbers of them a source of honest livelihood, would be seriously embarrassed and impeded. I may add that it appears strange that notwithstanding the large and powerful naval force possessed by the Government of the United States, no efficient measures have been taken by that Government to capture the Alabama.

On our part I must declare that to perform the duties of neutrality fairly and impartially, and at the same time to maintain the spirit of British law and protect the lawful industry of the Queen's subjects, is the object of Her Majesty's government, and they trust that the Government of the United States will recognize their earnest desire to preserve, in the difficult circumstances of the present time, the relations of amity between the two nations.

I am, &c.,
(Signed) RUSSELL.

No. 20.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *October* 29, 1863.

MY LORD: I acquainted you, in my letter of the 2d instant, that the matters connected with the proceedings of the confederate steamer Alabama at the Cape of Good Hope, to which your letter of the 29th Sep-

tember referred, were under the consideration of Her Majesty's government.

Those matters were—

1. The capture, by the Alabama, of the United States vessel Sea Bride, within, as was alleged, the territorial jurisdiction of Great Britain.

2. The character of the Alabama herself.

3. The manner in which the Tuscaloosa, alleged to be a tender of the Alabama, was dealt with by the authorities of the Cape.

On these several points I have to state to you—

1. That Her Majesty's government are satisfied by the concurrent testimony of the colonial and naval authorities at the Cape, that at the time of capture the Sea Bride was considerably more than three miles distant from the nearest land.

[43] *2. That as regards the character of the Alabama, that vessel is entitled to be treated as a ship of war belonging to a belligerent power, and that neither the governor nor any other British authority at the Cape was entitled to exercise any jurisdiction over her.

3. That as regards the Tuscaloosa, although Her Majesty's government would have approved the British authorities at the Cape if they had adopted toward that vessel a course different from that which was adopted, yet the question as to the manner in which a vessel under such circumstances should, according to the tenor of Her Majesty's orders, be dealt with, was one not altogether free from uncertainty. Nevertheless instructions will be sent to the British authorities at the Cape for their guidance in the event of a similar case occurring hereafter, and Her Majesty's government hope that under those instructions nothing will for the future happen to admit of a question being raised as to Her Majesty's orders having been strictly carried out.

Copies of the reports from the colonial and naval authorities on the matters in question will be sent to Her Majesty's minister at Washington, who will thereby be enabled to give to the Government of the United States any further explanation they may desire to obtain on the subject.

I am, &c.,
(Signed) RUSSELL.

No. 21.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, October 31, 1863. (Received November 2.)

MY LORD: I have the honor to acknowledge the reception of your note of the 29th instant, in reply to my representation of the proceedings of the steamer Alabama at the Cape of Good Hope.

Inasmuch as your lordship intimates that further explanations will be made to my Government through the agency of Her Majesty's minister at Washington, I shall confine myself to the transmission of a copy of your note.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

No. 22.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, October 31, 1863. (Received November 2.)

MY LORD: I have the honor to acknowledge the reception of your note of the 26th instant.

The conclusion to which it would seem that both governments arrive in regard to the disposition to be made of the claims growing out of the depredations of the Alabama and other vessels issuing from British ports appears to render further discussion of the merits of the question unnecessary. It is only to preclude the possibility of any inference growing out of an omission to notice it, that I beg permission to make a single remark in connection with your lordship's observation that "the British government declines to be responsible for the acts of parties who fit out a seeming merchant-ship." So far as the vessels now complained of are concerned, I think no reasonable doubt can be entertained, from the evidence which was obtained before their departure, that they never bore the semblance of merchant-ships, even to Her Majesty's officers who reported upon them.

I now beg permission to lay before Her Majesty's government a number of memorials and other papers connected with the depredations of the vessel formerly called the Oreto, and now the Florida, which I am instructed to request may be disposed of in the manner indicated in my note of the 23d instant, to which your lordship's was in answer.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

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[44] *[Inclosure 1 in No. 22.]

Messrs. Mann & Co. to Mr. Seward.

BOSTON, *September* 24, 1863.

DEAR SIR: Inclosed we hand you the memorial and protest of the destruction of the ship Commonwealth, of New York, by the war-steamer called the Florida, commanded by one Maffit; and we ask, through the Government of the United States, that a proper representation of our loss be made to the government of Great Britain, and reparation demanded; or that the Government of the United States may assume the same as one of the obligations to protect the rights of citizens thus wantonly violated; and as in duty bound will ever pray.

Yours, &c.,
(Signed) N. P. MANN & CO.

[Inclosure 2 in No. 22.]

MEMORIAL.

To the Hon. William H. Seward, Secretary of State, Washington, D. C.:

The memorial of N. P. Mann, N. P. Mann, jr., and A. J. Mann, of the city of Boston, merchants constituting the mercantile firm of N. P. Mann & Co., owners of one-fourth of the American ship called the Commonwealth, of New York, of the burthen of 1,275 tons, respectfully represents:

That said ship, being a legally registered American ship, sailed from the port of New York, on or about the 19th day of March now last past, laden with a cargo of general merchandise and Government stores, bound for San Francisco, in the State of California, under the command of George S. McClellan.

That the other three-fourth parts of said vessel were owned by citizens of the United States, and that she was engaged in the performance of her lawful voyage.

That the intended voyage was pursued without any material occurrence until Friday, the 17th day of April last, when the said ship was about thirty miles south of the equator, and in longitude about 30° west, at which time and place the master of said ship discovered a steamer steering toward said ship with the American or United States colors flying. That said steamer soon overhauled the ship, and sent a boat's crew on board armed with pistols and cutlasses. That the said boat's crew announced themselves as belonging to the war-steamer called the Florida, claiming to sail under the flag of the Confederate States so called, commanded by one Maffit.

That the master of the ship was ordered to repair on board the steamer, with all his papers; that the officers and crew of the ship were put in irons and transferred to the pirate steamer; and that after robbing the ship of many articles, she was set on fire by the pirate crew and totally consumed.

And now we, the said Nehemiah P. Mann, Nehemiah P. Mann, jr., and A. J. Mann, owners of one-fourth part of the said ship Commonwealth, do enter our solemn protest against the destruction of said ship; and do, by these presents, demand of the government of Great Britain full reparation for the same, in the sum of $22,250, being one-fourth of the value of the said vessel, and one-fourth of the value of the freight pending, and in course of being earned at the time said ship was destroyed, as hereinbefore set forth.

Your memorialists would further represent that they predicate and make this protest and demand upon the facts hereinafter stated, which, according to the best of their knowledge and belief, can be fully verified whenever it shall be found necessary, to wit:

The said steamer calling herself the "confederate war-steamer Florida" is an English vessel, and no other. She was built in England, and was allowed to leave the British waters, although information as to her true character, and the intention to use her as a privateer, to prey upon the commerce of the United States, then and now at peace with Great Britain, was lodged with the British government. That she left an English port under the British flag, and was manned by British subjects. That had any ship of war of the United States seized her after leaving British waters, she would have claimed the protection of the British flag, and have escaped under the cloak of British ownership. That said steamer has not, as your memorialists believe, at any
[45] time actually become the *property of any parties other than those who caused her to be built and fitted out in a British port.

And your memorialists would further represent that said steamer called the Florida, after thus fraudulently leaving the ports of Great Britain against the Queen's proclamation of neutrality, has repeatedly visited divers ports in the West Indies which are under the jurisdiction of Great Britain; and notwithstanding the facts were well known by the government officials at such ports, she has not been seized or detained by the British government, but, on the contrary, has been allowed every facility for obtaining supplies and advice that she might continue her piratical depredations upon American commerce. That no examination has ever been made by the British government, through their officers or agents, as to the manning of the said steamer by British subjects, or as to the prostitution of the British flag by thus giving protection to piracy under its folds.

In view of these matters, and of others which may be made apparent, your memorialists do now enter their solemn protest against the British government and people as willing parties, negligently culpable, in the destruction of their property on the high seas; first violating the proclamation of the Queen by building and manning said piratical steamer, and then allowing her to continue her depredations after her character w as patent to the world.

And your memorialists ask, through the Government of the United States, that a proper representation of their loss be made to the government of Great Britain, and reparation demanded; or that the United States may assume the same as one of the obligations to protect the rights of citizens thus wantonly violated.

And as in duty bound will ever pray.

(Signed) NEHEMIAH P. MANN.
NEHEMIAH P. MANN, JR.
A. J. MANN.

UNITED STATES OF AMERICA,
Commonwealth of Massachusetts, County of Suffolk, ss:

Be it known to all to whom it doth or may concern, that on the twenty-third day of September, in the year of our Lord 1863, before me, John S. Tyler, a notary public and justice of the peace, under the seal of the commonwealth, duly commissioned and sworn at my office, in the city of Boston, personally came Nehemiah Mann, jr., A. J. Mann, and Nehemiah Mann, resident merchants of this city, to me well known, and made before me the foregoing memorial and protest, declaring the same to be just and true.

Wherefore, at the request of said appearers, I have caused the same to be verified by the oaths of said appearers, and to be entered in my notarial records, to serve as occasion may require.

In testimony whereof I have hereunto affixed my official seal on the day of the date above written.

(Signed) JOHN S. TYLER,
Notary Public and Justice of the Peace.

[Inclosure 3 in No. 22.]

Mr. Boyd to Mr. Seward.

BOSTON, *August* 19, 1863.

SIR: Herewith I inclose depositions taken before John S. Tyler, esq., notary public, of those of the crew of the Redgauntlet who returned to this city. You will observe the main body of this deposition is signed by Charles F. Ellis, George Hammond, and William Hennessy; afterwards confirmed by George W. Fuller, whose parents reside in this city; and then again by him and John Baldwin, the carpenter, particularly as to the fact that the Florida had the English flag flying until the capture was completed. I deem the testimony of Baldwin important, as it seems he is an English subject, and very naturally had his attention drawn to what was going on under the English colors.

I am advised to-day by Captain Lucas, from Antwerp, August 4, that his protest, made there before the American consul, will be forwarded within the week. When received I will forward the same to your Department.

Very respectfully,
(Signed) FRANCIS BOYD.

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[46] [Inclosure 4 in No. 22.]

Affidavit of George W. Fuller and John Baldwin.

Be it known to all whom it doth or may concern, that on this 24th day of July, A. D. 1863, personally appeared before me John S. Tyler, a notary public, duly commissioned and sworn, George W. Fuller, seaman, and John Baldwin, carpenter, lately belonging to the ship Redgauntlet, of Boston, burnt by the piratical steamer Florida. And the hereto annexed affidavit, made by Charles F. Ellis, George Hammond, and William Hennessy, having been carefully read to these appearers, they hereby confirm the same: and said appearers did further declare that the British flag was flying on board the piratical steamer at the time the officers and boats' crew came on board the Redgauntlet, and remained flying until the officer had announced to Captain Lucas that his ship was a prize. Afterwards the British flag was lowered, and the rebel flag hoisted in its place.

In witness whereof the said appearers have hereto set their names, in presence of me, the said notary.

(Signed) GEORGE W. FULLER.
JOHN BALDWIN.

UNITED STATES OF AMERICA,
Commonwealth of Massachusetts, Suffolk, ss:

On this 24th day of July, A. D. 1863, George W. Fuller and John Baldwin made oath before me that the foregoing affidavit, by them signed, is true.

In testimony whereof I hereunto set my hand and seal of office.

(Signed) JOHN S. TYLER,
Notary Public.

I, George W. Fuller, of Boston, on oath declare that I shipped as ordinary seaman on board the ship Redgauntlet, on her attempted voyage from hence to Hong Kong; that I have read the affidavit of Ellis, Hammond, and Hennessy, who were my shipmates, hereunto annexed, and that I fully confirm the same.

(Signed) GEO. W. FULLER.

SUFFOLK, *ss:*

Sworn before me, July 18, 1863.

(Signed) JOHN S. TYLER,
Notary Public.

Affidavit of Charles F. Ellis, George Hammond, and William Hennessy.

Personally appeared before me, the undersigned notary public, at my office in Boston, Charles F. Ellis, green hand, George Hammond, steward, William Hennessy, cook, all lately belonging to the ship Redgauntlet, of Boston, A. H. Lucas, master, and being sworn to declare the truth, and nothing but the truth, did depose and say:

That they sailed in said ship from Boston on the 22d day of May now last, bound for Hong Kong, China, having each of them signed shipping articles for the said voyage: that they proceeded on the voyage without any material occurrences until Sunday, the 14th day of June ultimo, when, being in latitude 7° 40′ north, and longitude 35° 40′ west, at about 6 a. m. they discovered a steamer about fifteen miles distant. The Redgauntlet kept her course, being on the leeward The steamer altered her course, and ran down for the ship. She came up and fired a shot across the ship's bow. She had the British flag on her mizzen-yard or gaff. The ship was hove to by order of Captain Lucas, and a boat came on board from the steamer. There was a lieutenant and ten men in the boat; the men had cutlasses and revolvers. After they got on board, the steamer hauled down the English flag and ran up the flag of the so-called Confederate States. The lieutenant and Captain Lucas went into the cabin, and said Hammond, being in the cabin, heard the lieutenant say to Captain Lucas that he could take such of his things as he could put into a bag. Captain Lucas asked him to take his trunks, and the lieutenant assented, telling the captain to hurry. The rebel officers and men told the crew, as soon as they came on board, that they must each one get a bag and put in such things as it would hold to take with them on board the steamer. This was about half-past 8 a. m. All hands left the ship before 11 a. m., and went on board the steamer. As the men went on deck they were ironed, and then left on deck. The steamer's crew, to the number of about twenty men, went on board the ship, and both stood to the northward. They were in company about twelve days, during which the pirate captured and burned the ship R. R. Hoxie. Deponents saw on board the steamer the crew
[47] of the ship Southern *Cross, which vessel they were told had been destroyed before the Redgauntlet was taken. When the steamer used her sails only, the Redgauntlet would outsail her. On the 26th of June, being in about 29° north latitude, and 47° west longitude, the pirates all left the Redgauntlet, after setting her on fire. This was done at about half-past 5 in the afternoon. The steamer laid by for about an hour, during which the main and mizzen masts of the ship were seen to fall, and she was in a sheet of flame fore and aft. The steamer continued to stand to the northward, and next morning the ship could not be seen. On the 27th of June we fell in with a whaling-schooner, called the Farmer H. Hill, of Provincetown, which the steamer captured. At this time she was carrying the United States flag, and deponents did not see the rebel flag hoisted. At about half-past 10 the rebels had put these deponents, with all but five of the Redgauntlet's crew, and many other prisoners, in all fifty-four, on board the schooner, and she steered for Bermuda. Captain Freeman, the master of the schooner, said that he was compelled by the pirates to give a bond to get his vessel released.

On the 4th of July the schooner arrived at Hamilton, Bermuda, where all the fifty-four men were landed.

The deponents remained at Bermuda until the 9th day of July, when they sailed for New York in the brig Henrietta, having been provided with a passage by the consul of the United States.

On the 15th instant deponents arrived at New York, and came thence to Boston by the Fall River route.

Deponents have omitted to state that on the 18th of June the pirate steamer fell in with an Italian brig, which they boarded; said brig was bound for England. Captain Lucas, Mr. Dodge, first mate, Mr. Almy, second mate, and Mr. Brady, third mate, of the Redgauntlet, were put on board the said brig, with the masters and officers of other captured ships, by the direction of Captain Maffit.

The rebel steamer was the Florida, and further said deponents say not.

(Signed) CHARLES F. ELLIS.
GEORGE HAMMOND.
WILLIAM HENNESSY.

Attest:

(Signed) JOHN S. TYLER.

UNITED STATES OF AMERICA,
Commonwealth of Massachusetts, Suffolk, ss:

BOSTON, *July* 17, 1863.

Then the above-named Charles F. Ellis, George Hammond, and William Hennessy made oath before me that the foregoing affidavit, by them signed, contains nothing but the truth.

In testimony whereof I have caused the same to be recorded in my official record-book, and hereunto set my hand and seal of office.

(Signed) JOHN S. TYLER,
Notary Public and Justice of the Peace.

[Inclosure 5 in No. 22.]

Mr. Boyd to Mr. Seward.

BOSTON, *September* 3, 1863.

SIR: I had the honor of addressing you on the 19th ultimo, inclosing original copy of the protest taken here of the crew of the ship Redgauntlet, burned by the Florida.

I have now to inclose original copy of protest made by the master, A. H. Lucas, and the three officers, before A. W. Crawford, United States consul at Antwerp, to which port the officers were taken, as will appear by the document itself.

I should be glad to know if it is necessary or proper, at the present time, for me, as the owner of the ship, to make any more formal claim on the British government for the capture of said ship under their colors, and by their assistance in every form.

Respectfully, &c.,

(Signed) FRANCIS BOYD.

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[48] [Inclosure 6 in No. 22.]

Protest.

CONSULATE OF THE UNITED STATES OF AMERICA,
Port of Antwerp.

On this 31st day of July, A. D. 1863, before me, A. W. Crawford, consul of the United States of America for Antwerp and the dependencies thereof, personally appeared A. H. Lucas, master of the ship or vessel called the Redgauntlet, of Boston, of the burden of 1,038 tons or thereabouts; and declared that on the 23d day of May last past he sailed in and with the said ship from the port of Boston, bound for Hong-Kong, laden with ice and general cargo, and arrived in the Italian brig Due Fratelli, of Genoa, the ship Redgauntlet having been captured by a piratical steamer called the confederate steamer Florida, hereby enters this note of protest accordingly to serve and avail him hereafter, if found necessary.

(Signed) A. H. LUCAS,
Master.

Attested:

(Signed) A. W. CRAWFORD,
United States Consul.

I, the undersigned, consul of the United States of America for Antwerp and the dependencies thereof, do hereby certify that the foregoing is a true and genuine copy of the note of protest made by the master of the ship Redgauntlet, having been compared by myself with the original and found to agree therewith word for word and figure for figure.

Given under my hand and the seal of this consulate, this 31st day of July, 1863.

(Signed) A. W. CRAWFORD,
United States Consul.

CONSULATE OF THE UNITED STATES OF AMERICA.

PORT OF ANTWERP, *to wit:*

By this public instrument of declaration and protest, be it known and made manifest unto all whom these presents shall come or may concern, that on the 31st day of July, 1863, before me, A. W. Crawford, consul of the United States of America for Antwerp and the dependencies thereof, personally came and appeared A. H. Lucas, late master of the ship or vessel called the Redgauntlet, of Boston, of the burden of 1,038 tons or thereabouts, captured by the so-called confederate steamer Florida, laden with ice and general cargo, who duly noted and entered with me, the said consul, his protest for the uses and purposes hereafter mentioned: and now on this day, to wit, the day of date hereof, before me, the said consul, again comes the said A. H. Lucas, and requires me to extend this protest; and together with the said A. H. Lucas, also come R. F. Dodge, 1st officer, Charles E. Almy, 2d officer, and C. L. Brady, 3d officer of and belonging to the said ship, all of whom being by me duly sworn, &c., did severally, voluntarily, freely, and solemnly declare, depose, and state as follows, that is to say, that these appearers, on the 22d day of May, 1863, in their capacities aforesaid, sailed, in and with the said ship, from the port of Boston, laden with ice and general cargo, and bound to the port of Hong Kong; that the said ship was then tight, stanch, strong; had her cargo well and sufficiently stored and secured; had her hatches well caulked and covered; was well and sufficiently manned, victualed, and furnished with

all things needful and necessary for a vessel in the merchant service; and particularly for the voyage she was about to undertake; that nothing worthy of note occurred until Sunday, the 14th of June, when in latitude about 8° 30′ north, and longitude 34° 40′ west, at 6 a. m. on that day, the wind being east, discovered a vessel, apparently a bark, two points off the lee bow, and standing on the wind to the northward; a ship in sight to windward at the same time also standing to the northward; shortly afterwards discovered that the bark-rigged vessel was a screw-steamer with two smoke-stacks; at 7 a. m. the steamer bore due west from us, when the British flag was hoisted on board of her; we set the American flag in answer, and kept it flying about ten minutes, then hauled it down; at 7.30 a. m. the steamer tacked ship, took in all sail and steamed up toward us; shortly afterwards a shot was fired from the said steamer towards us, passing a few yards leeward of the ship; we then brought the ship to the wind in the usual manner, the steamer approached within a few yards to windward and some person hailed the ship, in the usual manner, asking where we were from, and where bound. We replied in the usual manner, and some person on board the steamer said they would send a boat aboard. A boat filled with armed men came alongside the ship, and an officer who had charge of the boat came aboard and demanded the ship's papers to look at; the moment the officer stepped on board, the British flag was hauled down and a flag called a Confederate States flag (with three horizontal stripes, red, white, and red, with a blue union containing thirteen white stars) was substi-

[49] *tuted. I produced the ship's papers, and after he had examined them he told me the ship was a prize to the Confederate States steamer Florida, Captain Maffitt. I said to the officer that the cargo of the ship was principally British, and directed his attention to the British consul's certificates attached to each bill of lading. He said that was no protection, that the ship was a good prize, and that I must get ready to go on board the Florida, adding at the same time that the boat was ready. I asked for the ship's papers, and he said that he would keep them and send them on board the Florida. I handed him a letter given me in Boston containing invoices and proofs of the nationality of the cargo, but no notice was taken of it. I was told to take nothing but wearing-apparel, and not too much of that, as it would not be allowed. He demanded all private arms and pistols, took the two chronometers and all the nautical instruments, and before I had time to pack up any of my clothing two armed men entered the cabin and told me to go in the boat, the officer saying he would send my clothing aboard. I obeyed, as resistance was useless. I, with the officers and crew, was transported to the steamer; on arrival there all, except the first officer and myself, were put in irons. I inquired for the commander, and asked him if he was Captain Maffitt. He replied that he was. I told him the ship's cargo was principally British, and that the bills of lading had British consul's certificates attached. He said that made no difference. I protested against his proceeding. He said the ship was a good prize. I asked him if he would bond the ship. He replied, "No; I shall bond no more American ships; it is a preposterous idea to think of bonding an American ship in order to save a little British cargo, for since Lincoln has declared the bonds of the Ariel null and void I shall destroy and not bond any American ships I may capture." A prize crew was put on board the Redgauntlet, and she kept company with the steamer, standing north-northwest. The ship was plundered from day to day, in moderate weather, the cargo and stores being transported to the steamer, as well as my own personal property, consisting of a chronometer, a sextant, a spy-glass, an opera-glass, barometer, books, charts, wearing-apparel, and other personal property, being appropriated to the use of the steamer, the captain, officers, and crew.

Thursday, June 18, gave chase to and came up with the brig Due Fratelli, of Genoa. The brig was boarded under the British flag, and on the return of the boat the so-called Confederate States flag was substituted. On the return of the boat I was ordered to go in the boat with my officers. We obeyed, and were transferred to the brig without being consulted or having any voice in the matter. The latitude was 13° 27′ north, longitude 40° west, the Redgauntlet in company.

Friday, June 19, at 2 p. m., saw the Florida and Redgauntlet both standing to the north-northwest.

Now, therefore, be it known to whom it may concern, that I, Augustus H. Lucas, late master of the ship Redgauntlet, of Boston, for and in behalf of all parties concerned or interested in the said ship Redgauntlet, her cargo, stores, outfits, freight, insurance, or in any other way or manner interested in anything appertaining to said ship, do hereby protest against the capture and piratical detention of said ship and cargo; against the commander, officers, and crew of the said steamer Florida, collectively and individually; also against the builders and owners of said steamer; against the government or governments, or belligerents, recognized or otherwise, who may be interested in said steamer; and against any and all governments and authorities, local or otherwise, who have permitted the said steamer to be fitted out, armed, equipped, manned, supplied, recruited, or allowed to enter or depart from their ports or dependencies; and also other persons assisting in the same; and in behalf of all concerned shall hold each and all of them responsible for all damage or damages which

may or shall arise in consequence of said capture; and also for all losses which may occur to the owner or owners, charterers, agents, shippers, consignees, underwriters, master, officers, or crew of said ship in consequence of said capture. And I, together with the officers of said ship Redgauntlet, do hereby conjointly sign this protest.

Thus done and protested in the port of Antwerp, this 1st day of August, in the year of our Lord 1863.

In testimony whereof these appearers have hereunto subscribed their names; and I, the said consul, have granted to the said master this public instrument under my hand and the seal of this consulate, to serve and avail him and all others whom it doth or may concern, as needed and occasion may require.

(Signed) A. W. CRAWFORD, *United States Consul.*
A. H. LUCAS, *Master.*
R. T. DODGE, *First Officer.*
CHARLES E. ALMY, *Second Officer.*
C. L. BRADY, *Third Officer.*

[50] *I, the undersigned, consul of the United States for Antwerp and the dependencies thereof, do hereby certify that the foregoing is a true and genuine copy of the protest made by the master of the ship Redgauntlet, having been compared by myself with the original and found to agree therewith, word for word and figure for figure.

Given under my hand, and the seal of this consulate, this 1st day of August, 1864.

(Signed) A. W. CRAWFORD,
United States Consul.

BRITISH CONSULATE, *Antwerp.*

I, the undersigned, Her Britannic Majesty's consul at Antwerp, hereby certify that A. W. Crawford, esq., whose signature is attached to the foregoing document, is the consul of the United States residing at this port.

In testimony whereof I have hereunto set my hand and affixed my seal of office this 5th day of August, 1863.

(Signed) G. A. GEATTON.

No. 23.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *November* 10, 1863.

SIR: I have the honor to acknowledge the receipt of your note of the 31st ultimo, inclosing further papers respecting the proceedings of the Alabama and the Florida.

I am, &c.,
(Signed) RUSSELL.

No. 24.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, November 14, 1863. (Received November 14.)

MY LORD: I have the honor to transmit a printed copy of the private journal of an officer of the steamer Alabama, which seems to have been furnished by the author for publication in the South African Advertiser and Mail, at Cape Town, in which newspaper it first appeared on the 19th of September last. The author appears to be Mr. G. S. Fullam, a British subject, belonging to Hull. I beg permission to call your lordship's attention to the remarkable manner in which the narrative corroborates the essential portions of the deposition of C. R. Yonge,

heretofore submitted to your consideration, some attempts to invalidate which were made in the course of the trial of the Alexandra. It likewise confirms, in almost every particular, the correctness of the representations which I had the honor to furnish from the consul of the United States at Liverpool of the mode in which the gun-boat 290 was originally equipped, fitted out, and armed from that port.

I likewise pray your lordship's attention to the abuse shown to be continually made of the national character of this vessel, in the fraudulent assumption of the flag or of the name of any other nation at pleasure whilst on the high seas. I need scarcely say that such a license to cover piratical depredation has only been obtained for her by the recognition given to the parties in America, authorizing it as a belligerent abiding by the established rules of legitimate warfare.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

No. 25.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *November* 16, 1863.

SIR: I have the honor to acknowledge the receipt of your letter of the 14th instant, and its inclosure, respecting the proceedings of the Alabama.

I am, &c.,
(Signed) RUSSELL.

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[51] *No. 26.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, January 13, 1864. (Received January 13.)

MY LORD: I pray your attention to copies of a letter of the consul of the United States at Liverpool, and of three depositions, all going cumulatively to prove the manner in which the neutrality of Her Majesty's realm has been abused by some of her subjects, for the purpose of carrying on war against the United States. I have every reason to suppose that these proceedings are continued without material diminution.

Renewing, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[Inclosure 1 in No. 26.]

Mr. Dudley to Mr. Adams

UNITED STATES CONSULATE,
Liverpool, January 11, 1864.

SIR: I beg to call your attention to copies of three affidavits: one of John Latham, another of his wife, Martha Latham, and the other that of Thomas Winstinley, inclosed.

It is a well-known fact that the steamer Alabama, which was built and fitted out at this port, and manned by British seamen, regularly receives her coal and supplies from this country, and that the families of the men now serving on board are paid once a month here in Liverpool by M. G. Klingender & Co., and Fraser, Trenholm & Co., the one-half part of the wages earned by the men on board this vessel. John Latham, of Swansea, in Wales, was one of the men who enlisted on said steamer. During the time of his service on board, his wife, Martha Latham, received regularly each month the one-half part of his wages, which was sent to her by M. G. Klingender & Co., No. 22 Water street, Liverpool. The money was transmitted in post-office orders. The letters in which this money was sent are annexed to her affidavit, and copies inclosed to you. At the time of enlisting Mr. Latham received a bounty. He sent £5 of this to his wife by Captain James D. Bullock. This £5 was paid to Thomas Winstinley for her at Fraser, Trenholm & Co.'s office by their cashier.

I regard these affidavits as important to show the character and nationality (if she has any) of this vessel, which, built in England, fitted out in England, armed with English guns, and manned by English seamen; supplied with coal and other necessaries while cruising from England, in English vessels, by English merchants; and the wages earned by the men while serving on board paid here in Liverpool by these same merchants to their wives and families residing here, stamps her, it seems to me, if anything can, as an English piratical craft.

I am, &c.,
(Signed) THOMAS H. DUDLEY.

[Inclosure 2 in No. 26.]

Affidavit of John Latham.

I, John Latham, of 36 Jasper street, Liverpool, in the county of Lancaster, engineer, make oath, and say as follows:

1. About the 8th or 10th of August, 1862, I signed articles at the Sailors' Home, Liverpool, to ship in the steamship Bahama, Captain Tessier, for a voyage to Nassau and back. The Bahama went out of the Bramley Moore dock the same night about 12 o'clock, and went into the river and lay to. Captain Semmes, Captain James D. Bullock, and some other officers came on board, and about half past 7 o'clock a. m. a tug-boat came alongside with some seamen on board: the tug-boat accompanied us out about ten miles. The tug then left us, and a tall gentleman, with a reddish face and pock-marked, who came from Cunard, Wilson & Co.'s office, left us and went into the tug; as he left us, he said, "I hope you will make a good thing of it, and that you will stop where you are going to." We then proceeded on our voyage, and stood out some days, when we found we were going to the Western Isles.

2. About the 17th or 18th of August we arrived at Terceira, and we there found the
[51] *Alabama and the bark Agrippina: Captain Butcher, who was on board the Alabama, hailed us and told us to go round the island, and he would be after us, but it would take them three-quarters of an hour to get his steam up. We went on, and he followed us, and the Alabama went under the lee of the island, and a shot was fired across the Bahama's bows from a battery on shore, so we stopped out until the morning. In the morning we went alongside the Alabama, and some small cases and a safe containing money was passed into the Alabama from our ship, and we then parted and anchored a little distance from her, and the bark Agrippina went and discharged the remainder of her cargo into the Alabama. During this time Captain Semmes and Captain Bullock were going backwards and forwards to the Alabama, but would not let any of the officers go. On Sunday, the 24th of August, Captain Semmes came on board the Bahama, and called us under the bridge, he himself and the officers standing on the bridge; he addressed us and said, "Now, my lads, there is the ship," (pointing to the Alabama;) "she is as fine a vessel as ever floated; there is a chance which seldom offers itself to a British seaman, that is, to make a little money. I am not going to put you alongside of a frigate at first; but after I have got you drilled a little, I will give you a nice little fight." He said, "There is only six ships that I am afraid of in the United States Navy." He said, "We are going to burn, sink, and destroy the commerce of the United States; your prize-money will be divided proportionately according to each man's rank, something similar to the English navy." Some of the men objected, being naval-reserve men. Captain Semmes said, "Never mind that, I will make that all right; I will put you in English ports where you can get your book signed every three months." He then said, "There is Mr. Kell on the deck, and all those who are desirous of going with me let them go aft and give Mr. Kell their names." A great many went aft, but some refused. A boat came from the Alabama, and those who had agreed to go went on board. Captain Semmes and the officers went on board. Mr. Lowe, the fourth lieutenant, then appeared in uniform, and he came on board the

Bahama, endeavoring to induce the men to come forward and join, and he succeeded in getting the best part of us. I was one who went at the last minute. When I got on board the Alabama I found a great number of men that had gone on board of her from Liverpool. Captain Semmes then addressed us on board the Alabama, and Captain Butcher was there also, who had taken the vessel out. Captain Semmes said he hoped we all should content ourselves and be comfortable one amongst another; but any of you that thinks that he cannot stand to his gun I don't want. He then called the purser, and such as agreed to serve signed articles on the companion-hatch, and on signing the men received either two months' pay in advance, or one month's wages and a half-pay note. I took a month's wages and a half-pay note for £3 10s. a month in favor of my wife Martha Latham, 19 Wellington street, Swansea; the note was drawn on Fraser, Trenholm & Co., of Liverpool, but it was paid at Mr. Klingender's in Liverpool; the note was signed by Captain Semmes, Yonge, who was the paymaster, and Smith, the captain's clerk. I sent £5 and this half-pay note ashore by Captain Bullock, and he forwarded it with a letter to my wife.

3. Captain Bullock on the passage out, and after we arrived at Terceira, used arguments to induce us to join the Alabama. On several occasions he advised us, and urged the men to join.

4. As soon as the men who had consented to go had all signed articles, the English ensign, which the Alabama had been flying, was pulled down, and the confederate flag hoisted, and a gun was fired. The men who declined joining left the ship, with Captains Bullock and Butcher, for the Bahama, and we proceeded, under the command of Captain Semmes; and I have in the schedule hereto annexed given a list of the officers and men, with their places of residence.

5. We proceeded on our voyage, and cruised about the Western Isles for some days, and on the following Sunday we fell in with a whaler, and burnt her; and we then cruised about, and in about two days we fell in with the schooner Starlight, from Boston. We fired at her four times. Her captain said, "If I had but one gun on board I would fight you." He tried to make the land, but we overhauled him, and he brought to. We kept the crew of the schooner, and on the next day we landed them at the Western Isles, and took the schooner in tow, for the purpose of decoying other vessels with the stars and stripes. We succeeded in capturing several; amongst other vessels we captured the Manchester, of Philadelphia line of packets, bound from New York to Liverpool. We burnt this vessel, having first taken her crew, and we put them on board the Tonawanda, which we had previously captured, and had then in tow. Amongst the crew there was a man of the name of George Forrest, who was one of the midshipmen recognized as having been a seaman on board the Sumter, and had deserted. He was brought on board to Captain Semmes, who told him that if he behaved well he should have his pay and prize-money
[53] *as the other men, but that he had a right to detain him throughout the war without paying him a cent. Forrest was retained on board the Alabama, was frequently punished by having his hands and legs fastened to the rigging, the punishment being known as the "spread eagle," and he would be kept in this position for four hours at a time, and this was done at least twenty times, and at last they ironed his legs and arms, and sent him on shore on a desolate island called Blencoola, some two hundred miles from the mainland, and left him. The crew subscribed some £17, unknown to Captain Semmes, which we gave him in the hope of its being some inducement to a vessel to take him off.

6. The bark Agrippina, flying the British flag, and loaded with coals from Cardiff, was at Martinique when we arrived there; and she went out to sea, and whilst out she supplied us with coal. After this we went to Arkaskees, where we stopped and painted the ship, and then went towards Galveston, and off that place we fell in with the American ship Hatteras, which we sunk. We got her crew on board, and proceeded to Port Royal, Jamaica. There I ran away and left the Alabama. Whilst there the Alabama enlisted two British sailors, who had deserted from Her Majesty's ships Jason and Steady. Thomas Potter, who was fireman, also ran away, but the men of the Alabama came after him and arrested him, and took him back to the ship. Clarence Yonge, the purser, also left the ship. I was also arrested at a hotel in Jamaica by the Alabama's crew. They wanted to force me on board, but I refused to go until I had seen the governor of the island, whose residence was some fifteen miles distance; and I saw the superintendent of police, who on my producing a certificate that I was a naval coast volunteer on board Her Majesty's ship Majestic, I was released.

7. My wife received my half-pay. She used to receive it by post-office order, payable at Swansea; and to obtain this she every month used to write Messrs. Fraser, Trenholm & Co., or M. G. Klingender & Co., Liverpool, inclosing the half-pay note, and the latter firm used to send her a post-office order for the £3 9s. 5*d.*, deducting the cost of the order and the postage. In February or March she wrote as usual for the half-pay note. They wrote in reply that they could send her no more money, as I had left the ship, but they did not return her the half-pay note.

8. On my return I called at Fraser, Trenholm & Co.'s office for the balance of my

wages, but they declined to pay me, and denied all knowledge of the ship; but Mr. Cooper gave me the name of Mr. M. G. Klingender, and told me to see him, and see if he could arrange it. I did so, but he told me he would not do so, as they had received a note from Captain Semmes that I had deserted at Jamaica.

9. The guns comprising the armament on the Alabama have Fawcett, Preston & Co.'s marks on them, showing they were made by this firm.

(Signed) JOHN LATHAM.

* Sworn and subscribed to before me this 8th day of January, 1864, at Liverpool, in the county of Lancaster.

(Signed) J. PEARSON,

A Commissioner to administer Oaths in Chancery in England.

SCHEDULE BEFORE REFERRED TO.

Officers and crew of the steamer Alabama.

Raphael Semmes, commander.
J. M. Kell, first lieutenant.
Richard F. Armstrong, second lieutenant.
Joseph Wilson, third lieutenant.
John Low, fourth lieutenant, Englishman.
Arthur Sinclair, master, that is sailing-master.
Francis L. Galt, surgeon, from Virginia, now acting as paymaster.
Miles J. Freeman, first assistant engineer, ranks as chief, born in Wales, does not know whether naturalized.
David Herbert Llewellyn, assistant surgeon, Englishman.
B. K. Howell, brother-in-law of Jeff. Davis, lieutenant of marines, (no marines on board.)
Wm. H. Sinclair, midshipman.
Irvine S. Bullock, midshipman, Captain Bullock's brother.
Eugene Maffitt, midshipman, Captain Maffitt's son.
Edward Maffitt Anderson, midshipman, son of Colonel Anderson.
Wm. P. Brooks, second assistant engineer.
S. N. Cummings, third assistant engineer.
Matthew O'Brien, third assistant engineer.
[54] *John M. Pundt, third assistant engineer.
George T. Fullam, first master's-mate, Englishman.
James Evans, second master's-mate, Charleston pilot.
W. B. Smith, captain's clerk.
Benjamin L. McCaskey, boatswain.
T. O. Cuddy, gunner.
Wm. Robinson, carpenter.
Henry Allcott, sailmaker, Englishman.
Clarence R. Yonge, paymaster.

Petty officers and seamen.

James King, master-at-arms, Savannah pilot.
Adolphus Marmelegs, Portuguese.
Wm. A King, quartermaster.
James King, master-at-arms.
James G. Dent, quartermaster.
Wm. Forestall, quartermaster, Englishman.
Ralph Masters, quarter gunner, Irishman.
Wm. Crawford, Englishman, lives in Liverpool, belongs to royal naval reserve.
George Addison, Englishman, lives in Liverpool.
Wm. Brinton, Englishman, royal naval reserve.
—— Robinson, head carpenter.
George Harwood, boatswain's mate, Englishman, pensioner from English navy, joined her at Liverpool Home, now is in Southerner as boatswain, lives in Liverpool.
Michael Kinshler, Irishman, fireman, has a pension in England.
Brent Johnson, second boatswain's mate, Englishman, naval reserve man, joined vessel at Liverpool.
Wm. Purdy, sailmaker's-mate, Irishman by birth, lives in Liverpool, belongs to naval reserves, joined her in Liverpool.
John Latham, fireman, an Englishman, belongs to coast volunteers, enlisted in Alabama at Terceira.

David Roach, fireman, Englishman, resides in Liverpool, belongs to royal naval reserve; enlisted in Liverpool; left her 22d November.

Thomas Murphy, fireman, Englishman, left her at Western Islands.

Thomas Welch, Englishman, left the ship; he enlisted in the Alabama in Liverpool.

James Smith, captain of forecastle, Englishman, residing in Liverpool, belongs to naval reserve; enlisted on board of Alabama in Liverpool.

Edward Fitzmorris, Englishman, enlisted on Alabama in Liverpool, is at home now; his wife lives at Aigburth.

George Addison, fireman, Englishman, lives at Liverpool, Copperas Hill; enlisted at Terceira.

James McFadgeon, fireman, Englishman, lives at No. 6 West Derby street, Liverpool; enlisted at Terceira, is now at home.

Thomas Potter, fireman, Englishman, enlisted in Alabama at Liverpool, lives in Athol street, Liverpool, deserted at Jamaica; they arrested him there and carried him on board; his wife lives in Liverpool now.

Samuel Williams, fireman, lives in Liverpool, born in Wales, enlisted in Alabama at Liverpool.

Patrick Bradley, fireman, Englishman, resides in Liverpool, enlisted in Liverpool.

John Orrigin, fireman, Irishman, resides in Athol street, Liverpool, enlisted in Liverpool.

Orran Duffy, fireman, Irishman.

Peter Duncan, fireman, Englishman, resides in Liverpool, enlisted in Liverpool.

Wm. Nevins, coal-passer, Englishman, belongs to naval reserve, enlisted at Liverpool.

Andrew Shillings, Scotchman, resides in Athol street, Liverpool; has a wife; enlisted at Liverpool; is a fireman.

Charles Priest, coal-passer, is a German.

George Yeoman, ordinary seaman, Englishman, enlisted at Terceira.

George Freemantle, seaman, Englishman, enlisted at Terceira.

Frederick Johns, purser's steward, Englishman, resides in Liverpool; father keeps a coal-yard in Howard street; enlisted at Terceira.

John Grandy, boy, English, lives in Liverpool.

Thomas Weir, gunner's mate, Englishman, enlisted at Liverpool.

James Busman, seaman, Englishman.

Edgar Tripp, seaman, Englishman, lives in London, enlisted at Liverpool.

John Neil, seaman, Englishman, lives with his sister in Manchester street, Liverpool; belongs to naval reserve; enlisted at Terceira.

Thomas Winter, fireman, Englishman, lives in Liverpool; his father is ticket collector at the Adelphi Theater; enlisted at Liverpool.

[55] *Samuel Henry, seaman, Englishman; resides in Liverpool; naval reserve man; enlisted at Liverpool.

John Roberts, seaman, Welchman; thinks he resides in Liverpool; enlisted at Terceira.

John Duggan, seaman, Englishman; resides in Liverpool; belongs to naval reserve; enlisted at Terceira.

Martin King, seaman.

Thomas Williams, seaman, Englishman; resides in Liverpool; belongs to naval reserve; enlisted at Terceira.

Robert Williams, seaman, Englishman; resides in Liverpool; belongs to naval reserve; enlisted at Terceira.

Joseph Pearson, seaman, Englishman; belongs to Chester; enlisted at Liverpool.

Joseph Connor, seaman, Englishman; resides in Walnut street; his wife lives there and keeps a butcher's shop; belongs to naval reserve; joined at Terceira.

Thomas McMullen, seaman, Englishman; resides in Liverpool; joined at Terceira.

Michael Mars, seaman, Englishman; belongs to Bristol; naval reserve; joined at Terceira.

Robert Egan, boy, English; belongs to Chorley.

Malcolm Macfarlane, seaman, Scotchman; resides in Liverpool; belongs to naval reserve; enlisted at Terceira.

Peter Henny, seaman, Irishman; lives in Liverpool; enlisted at Terceira.

Charles Goodwin, seaman, Englishman; resides in Liverpool; enlisted at Terceira.

James Hicks, captain of the hold, Englishman; enlisted at Liverpool; thinks he resides there.

Robert Parkinson, wardroom steward, Englishman; resides in Liverpool; enlisted in Liverpool.

George Appleby, yeoman, Englishman; resides in Liverpool; married man; enlisted in Liverpool.

John Emory, seaman, Englishman; resides in Liverpool; belongs to naval reserve; enlisted at Terceira.

William Hearn, seaman, Englishman: resides in Liverpool; belongs to naval reserve; enlisted at Terceira.

Thomas L. Parker, boy, English; stops with Brent Johnson.

A. G. Bartelli, seaman, Portuguese.

Peter Hughes, captain of top, Englishman: resides in Liverpool; belongs to naval reserve; enlisted at Liverpool.

Henry Fisher, seaman, Englishman: resides at Liverpool: enlisted at Liverpool.

Frank Townsend, seaman, Englishman; enlisted at Liverpool.

George Forrest, seaman, Irishman; taken off the ship Manchester because he had deserted from the Sumter, and tried by court-martial for causing mutiny, and sent on shore in irons to Island Blanco, and left there. Previous to his being tried for mutiny he was tied up twenty times in the rigging with his arms spread, for four hours at a time, day and night.

(Signed) JOHN LATHAM.

[Inclosure 3 in No. 26.]

Affidavit of Martha Latham.

I, Martha Latham, of 19 Wellington street, Swansea, in the county of Glamorgan, wife of John Latham, make oath and say as follows:

My husband was one of the crew of the steamer Alabama. In the month of August, 1862, my husband, who was in Liverpool, wrote to me that he was going out in the steamer Bahama to run the blockade. Some weeks after that I received a letter from my husband, dated at the Western Islands, stating that he had joined the steamer Alabama for £7 a month. On the same day I received another letter from Captain James D. Bullock, inclosing me a half-pay note, signed by Captain Semmes, for the half-pay of my husband while he served on board of said steamer Alabama. The note was payable to me at Fraser, Trenholm & Co., in Liverpool. In the latter part of August, or first part of September, 1862, my husband's cousin, Thomas Winstanly, 36 Jasper street, Liverpool, received £5 for me from the office in Liverpool. I had sent him Captain Bullock's letter, and the one from my husband; I sent my half-pay note to Liverpool to draw the money on it. It was returned to me in the letter annexed hereto, marked A. I signed my name and sent it to the office of M. G. Klingender & Co., Liverpool, who sent me £3 10*s.*, less 7*d.* the expenses. It was sent me in a post-office order, in a letter dated October 3, 1862, annexed hereto, and marked on back Exhibit B. On the 31st October, 1862, M. G. Klingender & Co. sent me
[56] another letter inclosing me another order for £3 9*s.* 6*d.*, being another month's half-pay on said note. On the 31st December, 1862, the Messrs. Klingender & Co. sent me another letter inclosing me an order for £3 9*s.* 6*d.* on account of said half-pay note. The letter is annexed hereto, and marked Exhibit C on the back. I received another half-pay of £3 9*s.* 6*d.*; it must have been in January, but the letter in which it was sent, as well as the letter written to me by Captain Bullock above mentioned, has been mislaid. All the money-orders were paid to me. In February or March I received from M. G. Klingender & Co. a letter, without date, stating that my husband had deserted, and stopping the pay on the allotment note. I had been in the habit of sending them the note every time I drew the money; the last time I sent it they retained it, and sent me the last-mentioned letter, but no money. They still have the allotment note in their possession. The letter from M. G. Klingender & Co., dated 31st of October, 1862, above mentioned, is annexed hereto, and marked Exhibit D. The last letter from them to me, without date, above mentioned, is also annexed hereto, and marked Exhibit E.

(Signed) MARTHA LATHAM.

Sworn and subscribed to this 31st day of December, 1863.

(Signed) J. ROLLY FRIPP,

A Commissioner for taking Oaths in the Court of Queen's Bench at Westminster.

A.

LIVERPOOL, *September* 30, 1862.

Messrs. M. G. Klingender & Co. must request Mrs. Martha Latham, before paying her the £3 10*s.*, to sign her name at the back of the allotment note, and then return it to them, when they will remit her a money-order for the amount, less cost of order.

Mrs. M. Latham, 19 Wellington street, Swansea, South Wales.

P. S.—Please note address, No. 22 Water street, Liverpool.

EXHIBIT B.

22 WATER STREET, *Liverpool, October* 3, 1862.

MRS. MARTHA LATHAM, 19 *Wellington street, Swansea, South Wales:*

MADAM: Inclosed please find a money-order payable at the post-office of your town for £3 9*s*. 5*d*. In future you must send us your allotment note signed across a receipt stamp.

Returning you the note, we are, &c.,

Per M. G. KLINGENDER & CO.,
(Signed) C. F. VON MELLE.

	£	*s*.	*d*.
Money-order	3	9	5
Cost of order	0	0	6
Receipt stamp	0	0	1
	3	10	0

EXHIBIT D.

LIVERPOOL, *October* 31, 1862.

MRS. MARTHA LATHAM, 19 *Wellington street, Swansea, South Wales:*

MADAM: We inclose you a money-order for £3 9*s*. 6*d*., payable at the post-office of your town.

Returning you your note, we are, &c.,

Per M. G. KLINGENDER & CO.,
(Signed) C. F. VON MELLE.

	£	*s*.	*d*.
	3	9	6
Cost of order	0	0	6
	3	10	0

[57] *EXHIBIT C.

LIVERPOOL, *December* 31, 1862.

Messrs. Klingender & Co. inclose Mrs. Martha Latham a post-office order for £3 9*s*. 6*d*., deducting as usual 6*d*. per cost of order.

No. 19 Wellington street, Swansea, South Wales.

EXHIBIT E.

MARTHA LATHAM, 19 *Wellington street, Swansea, South Wales:*

MADAM: We have this day received advices per West India mail from St. Domingo, stating that John Latham, with three other men, deserted the Alabama on the 25th January, at Kingston, Jamaica, and of course their allotment notes must be stopped.

We are, &c.,

Per M. G. KLINGENDER & CO.,
(Signed) C. F. VON MELLE.

[Inclosure 4 in No. 26.]

Affidavit of Thomas Winstinley.

I, Thomas Winstinley, of Liverpool, in the county of Lancashire, residing at 36 Jasper street, make oath and say:

I am a cousin of John Latham. After he had joined the Alabama in the summer of

1862, his wife, Martha Latham, wrote me that Mr. Latham had sent home a part of his advance wages, and requested me to go to Fraser, Trenholm & Co., in Liverpool, and get it for her.

I went to Fraser, Trenholm & Co.'s office either the last part of the month of August, or the fore part of September, 1862. I saw one of the men in their office. I presented him the note: it was for £5. I forget by whom it was signed. The man said, "Well, you are not Martha Latham, and this note is payable to her." I told him she lived at Swansea, and that she had written to me to get it for her, and showed him her letter to me. He then said if I would leave him the letter and note he would pay me. I consented to do this, and he paid me £5, which I remitted to Martha Latham, less the expenses. The person who paid me I was told by the other clerks in the office was Fraser, Trenholm & Co.'s cashier. I left the note and letter with him.

(Signed) THOMAS WINSTINLEY.

Sworn and subscribed to before me this 6th day of January, 1864, at Liverpool, in the county of Lancaster.

(Signed) J. PEARSON,
A Commissioner to Administer Oaths in Chancery in England.

No. 27.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *January* 14, 1864.

SIR: I have the honor to acknowledge the receipt of your letter of the 13th instant, inclosing copies of a letter from the consul for the United States at Liverpool, and of three depositions relative to the case of the Alabama, and I have the honor to inform you that these papers have been communicated to the proper department of Her Majesty's government.

I am, &c.,
(Signed) RUSSELL.

NORTH AMERICA. No. 3 (1864.)

CORRESPONDENCE RESPECTING THE ALABAMA.

(IN CONTINUATION OF CORRESPONDENCE PRESENTED TO PARLIAMENT IN FEBRUARY, 1864.)

LIST OF PAPERS.

No.		Geneva edition. Page.	Second edition. Page.
1.	Mr. Adams to Earl Russell, January 20, 1864, fifteen inclosures	1	527
2.	Earl Russell to Mr. Adams, January 23, 1864	17	543
3.	Earl Russell to Mr. Adams, February 8, 1864	18	544

*CORRESPONDENCE RESPECTING THE ALABAMA.

No. 1.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, January 20, 1864. (Received January 21.)

MY LORD: I have the honor to submit to your lordship's consideration copies of certain papers relating to the case of the bark Sea Bride, of Boston, captured by the Alabama.

It is affirmed in the depositions making a part of these papers that the Sea Bride was taken within the maritime jurisdiction of Great Britain, in Table Bay, at the Cape of Good Hope. It is presumed that if this fact can be established Her Majesty's government will not hesitate to accord that full reparation to the claimants for this lawless proceeding which is justly their due.

Should it, however, turn out on a fuller investigation of the facts that the capture was not made within the jurisdiction of Great Britain, I am nevertheless instructed to present the claim under the general argument set forth in the note which I had the honor to address to your lordship on the 23d of October last.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[Inclosure 1 in No. 1.]

Mr. Ryder to Mr. Seward.

BOSTON, *December* 16, 1863.

DEAR SIR: Yours of the 12th ultimo was duly received and contents noticed, and would say in reply that I now forward to you all the documentary proofs of the capture of bark Sea Bride, of Boston, by the pirate Alabama, in British waters. The papers are made to conform to your request. The amount claimed of the English government through you are thus:

Valuation of bark Sea Bride	$30,000
Valuation of charter	10,500
Stores, provisions, advance-wages, personal effects, &c., belonging to Captain Charles F. White, late master	3,393
Total	43,893

Respectfully, &c.,
(Signed) ELISHA H. RYDER, *Attorney.*

[Inclosure 2 in No. 1.]

Declaration of Elisha H. Ryder.

UNITED STATES OF AMERICA,
Commonwealth of Massachusetts, Suffolk, ss:

Be it known to all whom it may or doth concern, that on this 15th day of December, A. D. 1863, before me, George Howland Folger, a notary public, duly commissioned and sworn in and for the county aforesaid, personally appeared Elisha H. Ryder, of Boston,

in the county of Suffolk, Commonwealth of Massachusetts, who did on oath declare that he was owner of four sixty-fourth parts of the American bark Sea Bride, of Boston aforesaid, of the burden of 447 tons or thereabouts, and that he is agent for and represents the owners of the other portions of said bark Sea Bride, as appears by
[2] a power of *attorney duly executed, a copy of which is herewith annexed. That the said bark was owned as follows, viz, Elisha H. Ryder, four sixty-fourths; Caleb Eaton, four sixty-fourths; Gove and Choate, copartners, one sixty-fourth; Charles F. White, twenty-one sixty-fourths; James Clark, two sixty-fourths; David E. Mayo, one sixty-fourth; William Carver, twenty-one sixty-fourths; Jonathan Kiniston and James R. Kiniston, copartners, six sixty-fourths; Basset, Bacon, and Russell, copartners, four sixty-fourths, as will be seen by reference to the register of the bark, a copy of which is herewith annexed. That said bark Sea Bride, under the command of Charles F. White, sailed from the port of New York on the 28th of May last past, laden with a general cargo and bound to the port of Table Bay, Cape of Good Hope, one of the colonies of the kingdom of Great Britain; that the voyage was performed without any particular occurrence until noon of the third day of August last, when they sighted Table Mountain and made for Table Bay; but on the night of fourth day of said month, on account of the darkness, it was deemed advisable for the vessel to keep off for the night. On the morning of the fifth day they again stood in for the land. At about 2 p. m. they saw a steamer coming toward them, which they supposed to be the English mail-steamer, but they soon found her to be the confederate steamer Alabama. A gun was fired from the steamer and a demand was made for the Sea Bride to heave-to, which not being complied with another gun fired, and the commander of the steamer threatened to shoot the crew of the Sea Bride if they refused. Two boats were then lowered from the steamer, and sent on board the bark, which in the mean time had been hove-to. The officer in charge of the boats, on his arrival on board the bark ordered one of his crew to haul down the flag, and also ordered the captain of the bark to take his papers on board the Alabama, which was done at about a quarter before 3 p. m., when the position of the bark within Table Bay was as follows: Green Point light-house, bearing south by east: Robin Island light-house, bearing northeast. The bark being at the time of her capture in neutral water, or according to bearings within three miles of the land, where she was seized, captured, and taken possession of in the port of a friendly power where she was bound, by the confederate steamer Alabama aforesaid, as will be seen by reference to the protest of the master, made before the United States consul at Cape Town, a certified copy of which is herewith annexed. That by this seizure and confiscation this appearer and the other owners, whom he represents, have suffered injury and loss to the amount of $40,500, as follows: By the seizure and capture of the bark aforesaid, $30,000, as per estimate of Ebenezer Davis, esq., marine inspector of the Boston board of underwriters, certificate of which is herewith annexed. And the further sum of $10,500, being the amount due under the charter-party, a copy of which is herewith annexed, making the aforesaid sum of $40,500.

And now the said appearer, Elisha H. Ryder, in behalf of himself and the other owners whom he represents, prefers a claim against the government of the kingdom of Great Britain, holding them responsible for all losses and expenses arising from the seizure of the vessel aforesaid, this appearer and those he represents being themselves ready to furnish any additional proof desired in the premises; and the said appearer believes and claims, that according to the law of nations and in equity, the government of the kingdom of Great Britain is bound to idemnify, and hold him and those he represents harmless for all losses, together with interest and expenses in consequence of the seizure herein set forth.

And, furthermore, the said Elisha H. Ryder, in behalf of Charles F. White, late master of said bark Sea Bride, makes claim for his loss of charts, nautical instruments, clothing, books, and stores, together with sundry expenses and losses incurred by him to the amount of $3,393, seized with and in consequence of the seizure of the said bark Sea Bride, and belonging to him the said Charles F. White, a statement of which under oath is herewith annexed.

In testimony whereof I herewith set my hand and notarial seal at Boston, this 15th day of December, A. D. 1863, and the said Elisha H. Ryder has affixed his name, having solemnly sworn to the truth of the foregoing declaration.

(Signed) ELISHA H. RYDER.
(Signed) GEORGE H. FOLGER,
Notary Public and Justice of the Peace.

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[3] [Inclosure 3 in No. 1.]

Special power of attorney.

Know all men by these presents that we, Caleb Eaton, Abiel Gove, and Elbridge G. Choate, copartners; Charles F. White, all of Boston, in the commonwealth of Massa-

chusetts; James Clark, of Charleston, David E. Mayo, of Chelsea, William Cunner, Jonathan Kenniston, and James R. Kenniston, copartners, of Newburyport, in the commonwealth aforesaid; Zenas D. Bassett, Elisha Bacon, William S. Russell, copartners, of the city and State of New York, with Elisha H. Ryder, of Boston, commonwealth aforesaid, the sole owners of the American bark Sea Bride of Boston aforesaid, of the burden of 447 tons or thereabouts; that the said bark was owned in the following proportions, viz, the said Ryder four sixty-fourths; Eaton, four sixty-fourths; Gove and Choate, copartners, one sixty-fourth; White, twenty-one sixty-fourths; Clark, two sixty-fourths; Mayo, one sixty-fourth; Cunner, twenty-one sixty-fourths; Kenniston and Kenniston, copartners, six sixty-fourths; Bassett, Bacon and Russell, copartners, four sixty-fourths; have appointed, constituted, ordained, and made, and in our stead put Elisha H. Ryder, aforesaid, to be our true, sufficient, and lawful attorney for us, and in our name and stead, to ask, demand, sue for, collect and receive all such sum or sums of money, debts, dues, and other demands, which are or shall be due, owing, payable, and belonging to us the constituency or owners of the bark Sea Bride, and especially to ask, demand, sue for and collect, from and against the Government of the United States of America, or against any officer or officers acting for or on behalf of said Government, and further, provided it may or shall become necessary so to do, by reason of any request or direction of or from said United States Government, or its agents or officers, then to ask, demand, sue for, and collect from and against the government of Great Britain, or against any officer or officers acting under or in behalf of said last-named government, and in our names or otherwise to sign, execute, and deliver any releases and discharges, whether under seal or otherwise, giving and granting unto our said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as we might or could do if personally present, with full power of substitution and revocation, hereby satisfying and confirming all that our said attorney or his substitutes shall lawfully do, or cause to be done by virtue hereof.

In testimony whereof we have hereunto set our hands and seals, this 3d of November, A. D. 1863.

Witness our hands and seals.

(Signed) CALEB EATON.
ABIEL GOVE.
ELBRIDGE G. CHOATE.
CHARLES F. WHITE.
ROSENA CLARKE,
Administratrix of the estate of James Clarke.
DAVID E. MAYO.
WM. CUNNER.
JONATHAN KENNISTON.
JAMES R. KENNISTON.
ZENAS D. BASSETT.
ELISHA BACON.
W. S. RUSSELL.

Witnesses:
(Signed) T. F. BROWN.
T. F. BROWN.
L. NICKERSON.
L. NICKERSON.
L. NICKERSON.

Y AND STATE OF NEW YORK:

On this 3d day of November, 1863, before me, Thomas H. Armstrong, a public notary in and for the city and county and State of New York, residing in the city of New York, personally came Zenas D. Bassett, John Elisha Bacon, and William S. Russell, to me known to be the individuals described, and who executed the within instrument, and severally acknowledged that they executed the same of their free act and deed.

(Signed) THOMAS H. ARMSTRONG,
Notary Public.

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[4] *COMMONWEALTH OF MASSACHUSETTS, *Essex, ss:*

Be it known that on the 7th day of November, in the year of our Lord, 1863, before me, John T. Brown, a notary public duly commissioned and sworn and residing in the city of Newburyport, county and State aforesaid, personally appeared Jonathan Kenniston and James R. Kenniston, of said Newburyport, and personally known to me as the true and lawful owners of three thirty-second parts of said bark Sea Bride, and

acknowledged the foregoing power of attorney, by them signed and sealed, to be their free act and deed.

In testimony whereof I have hereunto set my name and affixed my notarial seal this 7th day of November, in the year of our Lord 1863.

(Signed) JOHN T. BROWN,
Notary Public.

UNITED STATES OF AMERICA,
Commonwealth of Massachusetts, Suffolk, ss:

Before me, George Howland Folger, a notary public duly commissioned and sworn in and for the county aforesaid, personally appeared Caleb Eaton, Abiel Gove, Elbridge G. Choate, Charles F. White, Rosena Clarke, administratrix of the estate of the late James Clarke, David E. Mayo, and William Cunner, to me known to be the individuals described in and who in my presence signed and executed the foregoing power of attorney, and severally acknowledged the same to be their free act and deed.

In testimony whereof I have hereunto set my hand and notarial seal in the city of Boston, this 10th day of November, A. D. 1863.

(Signed) GEORGE H. FOLGER,
Notary Public and Justice of the Peace.

PROBATE COURT.

COMMONWEALTH OF MASSACHUSETTS, *Middlesex, ss:*

To Rosena Clark, of Charleston, in the county and commonwealth aforesaid, widow, greeting:

Trusting in your care and fidelity, I, William A. Richardson, esq., judge of the probate court in and for said county of Middlesex, by virtue of the power and authority vested in me, do hereby ordain, constitute, and appoint you to be administratrix of the estate of James Clark, late of Charleston, in said county of Middlesex, painter, deceased and intestate. And you are ordered to make and return into said probate court, within three months from the date hereof, a true inventory of all the real estate, and all the goods, chattels, rights, and credits of said deceased, which have or shall come to your possession or knowledge. To administer according to law all the goods, chattels, rights, and credits of said deceased, and the proceeds of all his real estate that may be sold for the payment of his debts, which shall at any time come to your possession, or that of any other person for you. To render upon oath a true account of your administration within one year from the date hereof, and at any other times when required by the said court to pay any balance remaining in your hands upon the settlement of your accounts to such persons as said court shall direct. To deliver these letters of administration into said court, in case any will of said deceased shall be hereafter duly proved and allowed; and also within three months to cause notice of your appointment to be posted in two or more public places in the city or town in which said deceased last dwelt, and within one year to return your affidavits of having given such notice, with a copy thereof, to the probate office.

In witness whereof I have hereunto set my hand and caused the seal of said court to be affixed, at Cambridge, this 26th day of August, in the year A. D. 1863.

(Signed) WILLIAM A. RICHARDSON,
Judge of Probate.

(Countersigned) T. H. TYLER, *Registrar.*

SUFFOLK, *ss:*

I, George H. Folger, a notary public duly commissioned and sworn in and for the county aforesaid, do certify the foregoing to be a true and exact copy of the original letters of administration to Rosena Clark, administratrix to the estate of James Clark, deceased, now before me.

In testimony whereof I have herewith set my hand and notarial seal, this 10th day of November, A. D. 1863.

(Signed) GEORGE H. FOLGER,
Notary Public.

[5] *UNITED STATES OF AMERICA,
Commonwealth of Massachusetts, Suffolk, ss :

I, George Howland Fogler, a notary public duly commissioned and sworn in and for the county aforesaid, do certify the foregoing to be a true and exact copy of an original power of attorney from owners of bark Sea Bride to Elisha H. Ryder, now before me.

In testimony whereof I have hereunto set my hand and notarial seal, this 10th day of November, A. D. 1863.

(Signed) GEORGE H. FOLGER,
Notary Public and Justice of the Peace.

[Inclosure 4 in No. 1.]

Registry of vessels, United States.

(No. 110. Permanent.)

In pursuance of an act of the Congress of the United States of America entitled an "Act concerning the registering and recording of ships or vessels," Elisha H. Ryder, four sixty-fourths, of Boston, State of Massachusetts, having taken and subscribed the oath required by the said act, and having sworn that he, together with Caleb Eaton, four sixty-fourths; Abiel Gove, Elbridge G. Choate, copartners, one sixty-fourth; Charles F. White, twenty-one sixty-fourths, of said Boston; James Clark, two sixty-fourths, of Charleston; David E. Mayo, one sixty-fourth, of Chelsea; William Cunner, twenty-one sixty-fourths, Jonathan Keniston and James R. Keniston, copartners, six sixty-fourths, of Newburyport, State aforesaid; Zenas D. Bassett, Elisha Bacon, and William J. Russell, captains, four sixty-fourths, of city and State of New York, are the only owners of the ship or vessel called the Sea Bride of Boston, whereof Serenus W. Mayo is at present master, and a citizen of the United States, as he hath sworn, and that the said ship or vessel was built at said Newburyport, A. D. 1860 and 1861, as per enrollment No. 39 issued at this office this day, now canceled. Property partially changed, and said enrollment having certified that the said ship or vessel has one deck, three masts, and that her length is 130 feet 4½ inches, her breadth 28 feet 3 inches, and depth 13 feet 3 inches, and that she measures 447$\frac{2}{95}$ tons; that she is a bark, has an eliptic stern and a billet head.

And the said Elisha H. Ryder having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said bark has been duly registered at the port of Boston and Charleston.

Given under our hands and seals at the ports of Boston and Charleston this 27th day of May, in the year 1863.

(Signed) F. BIGGER, *Registrar.*
JAS. S. WHITNEY, *Collector.*
C. D. LINCOLN, *Deputy Naval Officer.*

Indorsed as follows:

CUSTOM-HOUSE, BOSTON, COLLECTOR'S OFFICE.
October 29, 1863.

This is to certify that the within is a copy of the original, as appears by the records of this office.

Given under my hand and seal the day and year above written.

(Signed) J. Z. GOODRICH.

[Inclosure 5 in No. 1.]

Declaration of Charles F. White.

PORT OF CAPE TOWN.

On this 6th day of August, in the year of our Lord 1863, before me, Walter Graham, consul of the United States of America for Cape Town and the dependencies thereof, personally appeared Charles F. White, master of the bark Sea Bride, of Boston, of the burden of 447$\frac{2}{95}$ tons, or thereabouts, and declared that on the 8th day of May he sailed in and with the said ship from the port of New York with general cargo, and arrived off Table Bay on the evening of the 4th instant, and having been captured so close to the shore by the confederate steamer Alabama, hereby enters this note of protest
[6] against *said capture as illegal, reserving his right to extend said protest at time and place convenient if found necessary.

(Signed) CHARLES F. WHITE,
Master of Bark Sea Bride.

Attested:

(Signed) WALTER GRAHAM,
United States Consul.

And be it further made known that on this 7th day of August aforesaid, together with the above named Charles F. White, master, also came John Scofield, chief mate, and Richard White, second mate of and belonging to said bark, who declared on oath that on the 28th day of May last past, in their capacity aforesaid, they sailed in and with the said bark from the port of New York laden with general cargo, and bound for the port of Table Bay: that they proceeded on their voyage without any particular occurrence until noon of the 3d instant, when they sighted Table Mountain and made for Table Bay; but on the night of the 4th instant, on account of darkness, they deemed it advisable to keep off for the night; but on the morning of the 5th they stood in for the land. At about 2 p. m. they saw a steamer coming toward them, which they considered to be the English mail-steamer, but they soon found her to be the confederate steamer Alabama. A gun was fired, and a demand was made to heave-to, which as they the said appearers did not comply with, another gun was fired, and the commander of the said steamer threatened to shoot them if they refused. The bark was then hove-to. Two boats were lowered from the steamer, and sent on board the bark, when the officer in charge of them ordered one of his crew to haul down the flag, and ordered the captain to take his papers on board the Alabama, which was done at about a quarter before three, when the position of the bark was as follows:

Green Point light-house bearing south by east, Robbins Island light-house bearing northeast. The said appearers did further protest against the said capture as illegal. Said bark was at the time in neutral waters, or according to bearings within three miles of the land.

And these appearers did further allege, declare, and say that they together with other of the ship's company used their best endeavors to bring the said bark into Table Bay, but were prevented by said capture.

(Signed) CHARLES F. WHITE, *Master.*
JOHN SCOFIELD, *First Mate.*
RICHARD R. WHITE, *Second Mate.*

Thus done and protested before me, Walter Graham, United States consul at Cape Town, this 7th day of August, 1863.

(Signed) WALTER GRAHAM,
United States Consul.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

I, George H. Folger, a notary public duly commissioned and sworn in and for the county aforesaid, do certify the foregoing to be a true and exact copy of the protest of bark Sea Bride, with the signature and seal of United States consul, late at Cape Town, now before me.

In testimony whereof I have hereunto set my hand and notarial seal at Boston, this 10th day of November, A. D. 1863.

(Signed) GEORGE H. FOLGER,
Notary Public.

[Inclosure 6 in No. 1.]

Certificate.

MARINE INSPECTOR'S OFFICE, 76 STATE STREET,
Boston, October 30, 1863.

I hereby certify to all whom it may concern that the bark Sea Bride, of Boston, captured by the confederate steamer Alabama, August 5, 1863, was built at Newburyport (launched) March, 1861; was 447 tons. Her frame and out-board plank were all white oak, deck-frame and ceiling were yellow pine, was fastened in a most thorough manner with copper and iron and through treenails; was sheathed with yellow metal
[7] when new *to 9½ and 10½ feet, was in all respects a very superior vessel, and in my opinion was worth, when she sailed on her last voyage, $30,000.

Rated in our Boston reports A 1.

(Signed) EBR. DAVIS,
Marine Inspector for the Boston Associated Board of Underwriters.

[Inclosure 7 in No. 1.]

Charter-party, &c.

The charter-party made and concluded upon in the city of New York, the 26th day of May, in the year 1863, between Charles F. White and acting owner of the Sea Bride, of Boston, of 447 tons or thereabouts register measurement, now lying in the harbor of New York, of the first part, and Messrs. Rufus Green & Co., of Providence, Rhode Island, of the second part, witnesseth that the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, do covenant and agree on the freighting and chartering of the said vessel unto the said party of the second part for a voyage from New York to Cape Town, Zanzibar, and back to Providence, Rhode Island, on the following terms:

1. The said party of the first part do engage that the said vessel in and during the said voyage shall be kept tight, staunch, well fitted, tackled, and provided with every requisite, and with men and provisions necessary for such voyage.

2. The said party of the first part do further engage that the whole space of said vessel (with the exception of the cabin and the necessary room for the accommodation of the crew, and the stowage of the sails, cables, and provisions) shall be at the sole use and disposal of the said party of the second part during the voyage aforesaid, and that no goods or merchandise whatever shall be laden on board, otherwise than from the said party of the second part or their agents, without their consent, on pain of forfeiture of the amount of freight agreed upon for the same.

3. The said party of the first part do further engage to take and receive on board the said vessel, during the aforesaid voyage, all such lawful goods and merchandise as the said party of the second part or their agents may think proper to ship.

And the said party of the second part, for and in consideration of the covenants and agreements to be kept and performed by the said party of the first part, do covenant and agree with the said party of the first part to charter and hire the said vessel as aforesaid on terms following, that is to say:

1. The said party of the second part do engage to provide and furnish to the said vessel cargo sufficient, at least, for ballast in foreign ports.

2. The said party of the second part do further engage to pay to the said party of the first part, his agents, for the charter or freight of the said vessel during the voyage aforesaid in manner following, that is to say, $10,500, one-fourth of which is earned and due on the discharge of cargo at Cape Town, and one-half of which is earned and due on discharge of cargo at Zanzibar, but payable at Providence on the return of the vessel, or news of her loss, and the balance on discharge of the cargo at Providence; also pay all foreign pilotages, port charges, lighterages, and consuls' fees, charterers to have the privilege of one passenger out and home.

It is further agreed between the parties to this instrument that the said party of the second part shall be allowed for the loading and discharging of the vessel at the respective ports aforesaid, lay-days as follows, that is to say, sufficient time for loading at New York, thirty running days for discharging and loading at Cape Town and Zanzibar, and dispatch in discharging at Providence, Rhode Island. And in case the vessel is longer detained the said party of the second part agrees to pay to the said party of the first part demurrage at the rate of $1,400 per month, by day for every day so detained, provided such detention shall happen by default of the said party of the second part or their agents.

It is also further understood and agreed that the cargo or cargoes shall be received and delivered alongside of the vessel within reach of her tackles, or according to custom and usages at the ports of loading and discharging. It is understood that the charterers are to pay on account of this charter sufficient money, not to exceed $1,000, free of commission, interest, or exchange, to disburse her at Cape Town and Zanzibar, to be deducted from the charter on the return of the vessel. The vessel to be consigned to the charterers' agents free of commissions.

[8] To the true performance of all and every of the foregoing covenants and agreements *the said parties each to the other do hereby bind themselves, their heirs, executors, administrators, and assigns, (especially the said party of the first part, the said vessel, her freight, tackle, and appurtenances, and the said party of the second part the merchandise to be laden on board,) each to the other in the penal sum of $10,500.

In witness whereof the said parties have hereunto interchangeably set their hands this 26th May, 1863.

(Signed) RUFUS GREENE & CO.
CHARLES F. WHITE.

Delivered in the presence of—
(Signed) L. MICKERSON.

UNITED STATES OF AMERICA,
Commonwealth of Massachusetts, Suffolk, ss:

I, George H. Folger, a notary public, duly commissioned and sworn in and for the county aforesaid, do hereby certify the foregoing to be a true and exact copy of an original charter-party of bark Sea Bride, now before me.

In testimony whereof I have hereunto set my hand and notarial seal at Boston, this 10th day of November, A. D. 1863.

(Signed) GEORGE H. FOLGER,
Notary Public.

[Inclosure 8 in No. 1.]

List of stores and personal effects belonging to Charles F. White, late master of the bark Sea Bride, of Boston, which vessel, together with the effects of the undersigned, as also her cargo, was seized and captured by the confederate steamer Alabama, on the 5th day of August, A. D. 1863, in Table Bay, Cape of Good Hope, one of the colonies of the kingdom of Great Britain, as is fully set forth in the protest of the captain and officers of said bark, extended before the American consul at Cape Town, to which reference is respectfully made:

Stores and provisions on board for the voyage out and home, valued as per bill	$1,600
1 brass cannon, 1,100 pounds	456
1 gun	12
1 rifle	20
1 chronometer	180
1 barometer and 1 spy-glass	20
1 Hosburg	40
1 Coast Pilot and Epitome	9
1 North Atlantic Navigator	5
1 sextant	125
1 octaret	20
Several charts	50
Barometer and thermometer	20
2 beds, one hair and one feather	75
Personal clothing	50
Scale and dividers	2
Nautical books	20
Pair of pistols	30
Advance wages paid to mates and crew	380
160 pounds tobacco	80
Board paid at Cape Town after capture	75
Passage from Cape Town to United States	130
Total	3,393

(Signed) CHARLES F. WHITE.
BOSTON, *December* 15, 1863.

UNITED STATES OF AMERICA,
Commonwealth of Massachusetts, Suffolk, ss:

Before me, George Howland Folger, a notary public, duly commissioned and sworn in and for the county aforesaid, personally appeared Charles F. White, late master of the bark Sea Bride, of Boston, and made solemn oath, that by the capture of the said bark by the confederate steamer Alabama, in Table Bay, the said appearer lost thereby his property and effects heretofore set forth, and that they were worth to him, at the time of capture, the sum of $3,393.

In testimony whereof I have hereunto set my hand and notarial seal at Boston, this 15th day of December, A. D. 1863.

(Signed) GEORGE H. FOLGER,
Notary Public and Justice of the Peace.

HER BRITANNIC MAJESTY'S CONSULATE,
States of Massachusetts and Rhode Island.

I, Francis Lousada, Her Britannic Majesty's consul for the States of Massachusetts and Rhode Island, do hereby certify that George H. Folger, esquire, of Boston, is a

notary public for the county of Suffolk, Massachusetts, duly qualified, and that
[9] to his acts and *attestations as such full credit and faith is due, and must be given; and I further certify that the within annexed is his genuine signature and notarial seal.

In testimony whereof I have hereunto set my hand and affixed my seal of office, at Boston, this 16th day of December, in the year of our Lord 1863.

(Signed) F. LOUSADA,
Her Britannic Majesty's Consul for Massachusetts and Rhode Island.

[Inclosure 9 in No. 1.]

Messrs. Green & Co. to Mr. Seward.

PROVIDENCE, RHODE ISLAND,
December 17, 1863.

SIR: Accompanying this we forward, for the attention of the Department, documental evidence of the capture, seizure, and loss of the cargo of the bark Sea Bride, of Boston, an act we believe to have been committed within neutral limits of the waters at Table Bay, to wit, within three miles of land; and our loss and damage we believe the government of Great Britain to be liable and responsible for, by their authorities at the Cape disregarding the protest of the master and officers of said vessel, and also of the American consul, against the illegal seizure of said vessel and cargo.

We, shippers of the cargo, therefore beg the attention of the Department, and pray that the facts set forth and sworn to in the papers, with our demand and claim for loss and damage sustained in consequence thereof, may be made on the government of Great Britain through the proper department of the American Government.

All of which is respectfully submitted by yours, &c.,

(Signed) RUFUS GREENE & CO.,
Of Providence, Rhode Island.

[Inclosure 10 in No. 1.]

Declaration of Rufus Greene.

UNITED STATES OF AMERICA,
Commonwealth of Massachusetts, Suffolk, ss:

Be it known to all whom it doth or may concern, that on this 13th day of December, A. D. 1863, before me, George Howland Folger, a notary public duly commissioned and sworn in and for the county aforesaid, personally appeared Rufus Greene, of the city of Providence, in the State of Rhode Island, one of the partners, and representing the mercantile house or firm of Rufus Greene & Co., transacting and having their place of business in Providence aforesaid, the said mercantile firm consisting of Rufus Greene, William S. Arnold, and Benjamin R. Arnold, copartners, who did on oath declare that the said firm did ship from the port of New York, on board of the bark Sea Bride, belonging to the port of Boston, and commanded by Charles F. White, and bound to Cape Town and Zanzibar, a cargo of assorted merchandise of the value of $36,945.12, as will be seen by the invoice, a certified copy of which is herewith annexed; that the said bark proceeded on the voyage aforesaid, having sailed from New York on the 25th May last past, meeting with no particular occurrence until noon of the 3d day of August, when they sighted Table Mountain, and made for Table Bay; but on the night of the 4th day of said month, on account of the darkness, it was deemed advisable for the vessel to keep off for the night. On the morning of the 5th day they again stood in for the land. At about 2 p. m. they saw a steamer coming toward them, which they supposed to be the English mail-steamer, but they soon found it to be the confederate steamer Alabama. A gun was fired from the steamer, and a demand made for the Sea Bride to heave-to, which not being complied with, another gun was fired, and the commander of the war-steamer threatened to shoot the crew of the Sea Bride if they refused. The bark then hove-to, and two boats were then lowered from the steamer and sent on board the bark. The officer in charge of the boats on his arrival on board the bark directed one of his crew to haul down the flag, and ordered the captain of the bark to take his papers on board the Alabama, which was done at about a quarter before 3 p. m., when the position of the bark within Table Bay was as follows: Green Point light-house bearing south by east, Robben's Island light-house bearing northeast, the bark being at the time of her capture in neutral waters, or, according to bearings, within three miles of the land, when she was seized, captured, and taken possession of in the

port of a friendly power, where she was bound, one of the colonies of Great Brit-
[10] ain, by the piratical confederate *steamer Alabama aforesaid, as will be seen by reference to the protest of the master made before the United States consul at Cape Town, a certified copy of which is herewith annexed. That by this seizure this appearer and those whom he represents have suffered injury and loss to the amount of $49,445.12, as follows: By the seizure of the cargo before mentioned, of the invoice value of $36,945.12, and a further loss, in consequence of the non-arrival of the cargo at its ports of destination, of the sum of $8,500, making the aforesaid sum of $44,445.12.

And now the said appearer, Rufus Greene, in behalf of himself and the other members of his mercantile firm whom he represents, prefers a claim against the government of the kingdom of Great Britain, holding them responsible for all losses and expenses arising from the seizure of the cargo aforesaid, this appearer and those he represents holding themselves ready to furnish any additional proof desired in the premises; and the said appearer believes and claims that, according to the law of nations and in equity, the government of the kingdom of Great Britain is bound to indemnify and hold them harmless for all losses, together with interest and expenses, in consequence of the seizure herein set forth.

In testimony whereof I have hereunto set my hand and notarial seal, at Boston, the year and day above written; and the said Rufus Greene hath affixed his name, having solemnly sworn to the truth of the foregoing declaration.

(Signed) GEORGE H. FOLGER,
Notary Public and Justice of the Peace.

HER BRITANNIC MAJESTY'S CONSULATE,
States of Massachusetts and Rhode Island.

I, Francis Lousada, Her Britannic Majesty's consul for the States of Massachusetts and Rhode Island, do hereby certify that George H. Folger, esq., of Boston, is a notary public for the county of Suffolk, Massachusetts, duly qualified, and that to his acts and attestations, as such, full credit and faith is due and must be given; and I further certify that the within annexed is his genuine signature and notarial seal.

In testimony I have hereunto set my hand and affixed my seal of office, at Boston, this 16th day of December, in the year of our Lord 1863.

(Signed) F. LOUSADA,
Her Britannic Majesty's Consul for Massachusetts and Rhode Island.

[Inclosure 11 in No. 1.]

Invoice of cargo laden on board the bark Sea Bride, White, master, bound to Cape Town and Zanzibar, Henry Spaulding, supercargo, on board.

NEW YORK, *May* 25, 1863.

200 barrels flour, Mt. Vernon, for Zanzibar, at $9	$1,800 00
1,000 barrels flour, La Favista and Oscawanna, at $7.50	7,500 00
95 boxes N. cheese, 1,034 pounds, at 16 cents	134 84
35 boxes E. D. cheese, 705 pounds, at 15 cents	105 75
346 boxes candles, adamantine, 20 pounds each, at 20 cents	1,384 00
500 boxes extra family soap, 16 pounds each, at 1 cent	600 00
28 bales hops, 5,833 pounds each, 22 cents	1,283 26
10 tierces smoked hams, 2,899 pounds each, 12 cents	347 88
50 barrels prime pork, at $12 each	600 00
50 barrels Excelles beef, at $30.50 each	675 00
2 cases, 120 pairs, men's split brogans, at $1.25 each	150 00
1 case, 60 pairs, men's goat brogans, at $1.40	84 00
2 cases, No. 1, 24 pairs, 300 pounds, beams, $3 each	72 00
2 cases, No. 2, 18 pairs, beams, $3 each	81 00
2 bundles frames for beams	12 00
2 bottoms for beams	13 00
2 cases 50 beams and weight	93 75
2 platform-scales and 2 weights	28 90
100 kegs white-lead, 25 pounds each, 2,500 pounds, at 8 cents	200 00
4 cases glass beads, 1,440 bunches, at 21 cents each	302 40
4 iron barrels caustic soda, 2,399 pounds	175 13
1 case 8 reams paper, order	121 75
48 boxes and 2 packages clocks, 297 clocks	1,078 75

2 cases compo-nails, 200 pounds, order	$58 00
1 case 115 chak. yellow metal, 615 pounds, at 29 cents	178 35
[11]* 1 silver hunting-watch, order	15 00
1 gold hunting-watch	58 00
1 barrel, containing lamp, fixtures, and oil, order	19 50
1 box, 20 gallons coal-oil, order	13 00
1 case lamps and fixtures	19 50
1 package, 3 dozen knives, order	24 50
24 boxes crackers, assorted, 8,000 pounds	1,102 17
2 walking-canes, order	15 00
31 half-boxes tobacco, H. Buckley & Co., 2,493 pounds, at $55	1,371 15
100 three-quarter boxes tobacco, our own, 11,715 pounds, at $40	4,686 00
75 three-quarter boxes tobacco, Fairmount, 9,013 pounds, at $35	3,154 55
26 cases tobacco, Excelsior, 4,063 pounds, at $45	1,828 35
41,000 hogshead-staves, at $80 per 1,000	3,280 00
10,000 hogshead-heading, at $80 per 1,000	800 00
1 case brushes	60 25
1 case stationery, order	29 25
2 dozen tins	1 50
	33,586 48
10 per cent. advance	3,358 64
	36,945 12

Invoice of cargo per Sea Bride, Charles F. White, master, consigned Henry Spaulding, supercargo, on board, to proceed to Cape Town; transact the business according to memorandum, using dispatch for the vessel, and consigning all proceeds of sales and advances, with remainder of cargo, to William E. Hines, the shipping agent at Zanzibar.

(Signed) RUFUS GREENE & CO.

NEW YORK, *May* 27, 1863.

UNITED STATES OF AMERICA,
Commonwealth of Massachusetts, Suffolk, ss:

Before me, George H. Folger, a notary public, duly commissioned and sworn, in and for the county aforesaid, personally appeared Rufus Greene, of the mercantile house of Rufus Greene & Co., of the city of Providence, in the State of Rhode Island, and made solemn oath that the foregoing is a true and correct copy of an invoice of cargo, shipped by their firm on board the bark Sea Bride, which vessel was seized and captured by the confederate steamer Alabama, in Table Bay, Cape of Good Hope, one of the colonies of the kingdom of Great Britain; that the said firm lost thereby the property above set forth, and that they were worth to said firm, at the time of capture, a sum exceeding the amount stated in the invoice.

In testimony whereof I have hereunto set my hand and notarial seal, at Boston, this 15th day of December, A. D. 1863; and the said Rufus Greene has also affixed his name, having solemnly sworn to the truth of the foregoing declaration.

(Signed) GEORGE H. FOLGER,
Notary Public and Justice of the Peace.
RUFUS GREENE.

[Inclosure 12 in No. 1.]

Declaration of Charles F. White.

PORT OF CAPE TOWN.

On this 6th day of August, in the year of our Lord 1863, before me, Walter Graham, consul of the United States of America for Cape Town, and the dependencies thereof, personally appeared Charles F. White, master of the bark Sea Bride, of Boston, of the burden of 447$\frac{2}{95}$ tons, or thereabouts, and declared that on the 28th day of May he sailed in and with the said ship from the port of New York, with general cargo, and arrived off Table Bay on the evening of the 4th instant, and having been captured so close to the shore by the confederate steamer Alabama, hereby enters this note of pro-

test against said capture as illegal, reserving his right to extend said protest at time and place convenient, if found necessary.

(Signed) CHARLES F. WHITE,
Master of the Bark Sea Bride.

Attested:
(Signed) WALTER GRAHAM,
United States Consul.

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[12] *And be it further made known that on this 7th day of August aforesaid, together with the above-named Charles F. White, master, also came John Scofield, chief mate, and Richard White, second mate, of and belonging to said bark, who declare, on oath, that on the 28th day of May last past, in their capacity aforesaid, they sailed in and with said bark from the port of New York, laden with general cargo, and bound to the port of Table Bay; that they proceeded on their voyage without any particular occurrence until noon of the 3d instant, when they sighted Table Mountain, and made for Table Bay; but on the night of the 4th instant, on account of the darkness they deemed it advisable to keep off for the night, but on the morning of the 5th they stood in for the land. At about 2 p. m. they saw a steamer coming toward them, which they considered to be the English mail-steamer, but they soon found her to be the confederate steamer Alabama. A gun was fired, and a demand was made to heave to, which, as the said appearers did not comply with another gun was fired, and the commander of said steamer threatened to shoot them if they refused.

The bark was then hove-to. Two boats were lowered from the steamer, and sent on board the bark, when the officer in charge of them ordered one of his crew to haul down the flag, and ordered the captain to take his papers on board the Alabama, which was done at about a quarter before 3, when the position of the bark was as follows:

Green Point light-house bearing south by east; Robben's Island light-house bearing northeast.

The said appearers did further protest against the said capture as illegal; said bark was at the time in neutral waters, or according to bearings within three miles of the land.

And these appearers did further allege, declare, and say that they, together with others of the ship's company, used their best endeavors to bring the said bark into Table Bay, but were prevented by said capture.

(Signed) CHARLES F. WHITE, *Master.*
JOHN SCOFIELD, *First Mate.*
RICHARD R. WHITE, *Second Mate.*

Thus done and protested before me, Walter Graham, United States consul at Cape Town, this 7th day of August, 1863.

(Signed) WALTER GRAHAM,
United States Consul.

UNITED STATES OF AMERICA,
Commonwealth of Massachusetts, Suffolk, ss:

I, George H. Folger, a notary public, duly commissioned and sworn, in and for the county aforesaid, do certify the foregoing to be a true and exact copy of the protest of the bark Sea Bride, with the signature and seal of the United States consulate at Cape Town now before me.

In testimony whereof I have hereunto set my hand and notarial seal, at Boston, this 15th day of December, A. D. 1863.

(Signed) GEORGE E. FOLGER,
Notary Public.

[Inclosure 13 in No. 1.]

Extract from the Cape Argus, of September 19, 1863.

THE ALABAMA AGAIN IN SIMON'S BAY.—HER DOINGS ON HER RECENT CRUISE.—SALE OF THE SEA BRIDE AND HER CARGO.

[From our special correspondent.]

SIMON'S BAY, *September* 18, 1863.

Here we have the Alabama once more lying at her anchorage, within 300 yards of Grout's Hotel, and within pretty nearly the same distance off Hood Bay, just on the

other side of the point. We have the Federal Vanderbilt cruising about in search of the famous confederate. So it would appear that if there has not been actual fighting outside, as it was reported there had been, the steamers have been within an ace of coming into collision.

The arrival of the Alabama has created quite a stir throughout the place. It seems as if there was something doing once more. The officers are on shore stretching
[13] their legs a bit, and enjoying themselves in various ways, and on board all hands are at work cleaning, painting, and trimming the ship. There have been a hundred stories afloat, since the Alabama left and the Vanderbilt arrived, as to the movement of the ships. And although there was no truth in the rumor of a fight having taken place a day or two ago, nor in a good deal besides that has been said about the Alabama, it appears that rumor was pretty well informed on a few points, and especially with regard to the Sea Bride and the Tuscaloosa. With a view of ascertaining the exact state of the facts, I took a run down here on Thursday evening: found Captain Semmes on board his ship, and heard from his own lips an account of what he has done since he left the bay: what has become of his prizes, and what his future movements are likely to be.

It appears that when he left False Bay he resolved to spend a few days in looking after Federal merchantmen coming from the East, and thinking L'Aquillas the most likely place to fall in with them he took up a position off that point. The Tuscaloosa and the Sea Bride had been previously ordered to go to Angra Pequena.

The object of sending the Tuscaloosa there was to get wool taken out of her and replaced by ballast, and then to send her cruising as before. Captain Semmes had previously had an offer for the Sea Bride which he resolved to accept. He says that his desire was, and is, to observe strictly the laws of neutrality, and to do nothing which can possibly give offense to the British authorities. Angra Pequena belongs as much to Captain Semmes as to the British government, or perhaps anybody else, and any transaction there could give no ground of complaint to Governor Wodehouse, Admiral Walker, or the imperial government. A day was fixed for both the Tuscaloosa and Sea Bride to be at anchor in the harbor of Angra Pequena. Upon that day Captain Semmes took in the Alabama, met the parties, who had made him the offer for the Sea Bride, and completed the sale of her. When sold the Sea Bride was taken away. The wool was then taken out of the Tuscaloosa and landed. The Tuscaloosa was ballasted, went to sea again, and is now cruising not very far off the land. Captain Semmes then returned to his position off L'Aquillas bank, but not a single Federal merchantman made her appearance. He boarded whilst there sixteen ships, but all were English cargoes. The following is a list of them:

August 15.—English bark Saxon, Algoa Bay to Cape Town. 17th. English ship Broughton Hall, Bombay to Liverpool: medical aid being required on board her, Assistant-Surgeon Llewellyn was sent to render it. 19th. English ship Camperdown, Madras to London. 20th. English bark Durban, Natal to London. 22d. Overhauled a bark showing Dutch colors. 23d. English ship Sarawak, Bombay to Liverpool. 24th. Dutch bark Maria Elizabeth, Batavia to Amsterdam. 28th. English schooner Flower of Yarrow, Ichaboe to Cape Town. September 3d. English ship Punjaub, Kurrachee to London. 4th. English bark Isle of May, Ceylon to London, by signal. 8th. English ship Nahant, Bombay to Liverpool. 9th. Saw a bark showing English colors: English ship Cameronian, Calcutta to London: English ship Flora, Manila to Liverpool. 12th. Exchanged colors with an English bark.

The wool taken out of the Tuscaloosa at Angra Pequena is now on its way to a market, where Captain Semmes did not tell me, and it being no business of mine, nor, so far as I am aware, of anybody else, except himself, I did not think it to inquire. He does not himself know precisely where the Sea Bride is gone, but he made no secret as to her purchaser.

Captain Semmes further told me that he was particularly annoyed that certain parties should have endeavored, immediately his back was turned, by means of false statements, to bring him into collision with the naval authorities at Simon's Town and the governor of the colony. He says that so far from having done anything that could possibly give offense, he has studiously avoided every act that could possibly be construed into a breach of the law.

The story told by the person who piloted the Alabama into Saldanha Bay on the occasion of her first visit is contradicted both by Captain Semmes and the officers of the ship. The pilot stated that Captain Semmes had agreed to give him £20 to take in the ship, and afterward refused to pay him more than £3. The truth is that when Captain Semmes saw the little coasting-vessel commanded by the person who acted as pilot, he sent an officer on board her to ask where Saldanha Bay was. The captain of the coaster asked the officer to take him on board the steamer, which the officer consented to do. Nothing was said about pilotage, but when the captain of the coaster got on board the Alabama, he began to give such directions as a pilot would have given, and was allowed to take the ship into the bay. When the ship was at anchor, Captain Semmes asked him what was his charge for pilotage. That was the first time payment

was spoken of. Neither £20 nor any other sum had been promised. The man
[14] replied that he did not know. Captain Semmes then *asked what was the charge for pilotage at Table Bay or Simon's Bay; the man said he did not know. He was repeatedly asked to name a sum, but declined to do so. Captain Semmes then called an officer who had been a commander of a British ship on the English coast, and asked what would be the charge for piloting the Alabama into an English port. The officer replied it would be about £2. Captain Semmes then said to the pilot, suppose we say £3. The man made no reply, but went below with an officer who was to take a receipt for the money; when he got below the man seemed to take a second thought, for he said he would not take so small a sum as £3. A Federal commander, a little while before, had paid him £20, and he did not see why he should not have £20 now. That sum Captain Semmes declined to pay, but says that if the man had asked him for £5, £6, £7, or £8, he would have given it at once, and would never have thought of fixing the amount himself if the pilot had not declined to do so.

Up to the time that he came into Simon's Bay, Captain Semmes did not know that the Vanderbilt had arrived here. He had been within sight of the land for four days, but saw nothing whatever of her. He thinks the Vanderbilt much too heavy for him, but is by no means alarmed at finding himself so near her. He says he is pretty comfortable where he is, and expects the Kadre round from Table Bay with about 200 tons of coal, which he intends to take in. If the Vanderbilt should happen to come in while he is here, he will insist upon his right to have twenty-four hours' start. If she stops outside she must keep a proper distance from the headlands of False Bay; and as False Bay is sixteen miles across, he thinks there will be plenty of room for him to get out, without running foul of the Yankee.

In commenting upon the probable consequences of an encounter with the Vanderbilt, Captain Semmes spoke with modesty of the power of his own ship. He said that although the machinery of the Vanderbilt would be a good target, in fighting with a steamer it is not so easy to escape having a broadside. He found that to be the case with the Hatteras. Although he disposed of her pretty easily, it was as much as he could do to prevent her from giving him a broadside. The plan he adopted with the Hatteras was to use his large Blakeley gun from the stern of his ship, and that gun did the work. The gun is an 85-pounder, and he thinks that his only chance with the Vanderbilt will be to use it upon her machinery. His opinion is that the Vanderbilt has very much greater speed than the Alabama, and that it will be impossible for him to get away from her. He does not intend to go and look for her; but he says that if he has to fight her he will do his best.

He expects to leave False Bay about Monday next. He would not have come back to Simon's Bay now, but his condensing-apparatus got out of order. A few days after leaving Simon's Bay, and when about four days at sea, he found that the condenser did not act properly. It did not take more than one-third of the salt out of the water. Captain Semmes was consequently compelled to put the men upon an allowance. Upon arriving at Angra Pequena he obtained from a person there sixteen casks of water, and that quantity sufficed for the return voyage to Simon's Bay. The repairs of the condenser are nearly completed, and as soon as the coal is on board, the Alabama will be ready to take her final departure from the Cape of Good Hope. Captain Semmes says that it is not probable that when once he gets away we shall see his face again for some time to come.

It was rumored in town yesterday that the honorable Mr. Field, the collector of customs, had received a letter from Saldanha Bay, stating that the Vanderbilt had anchored there. On inquiry, we found that this was not true. She is still cruising just outside the cape.

[Inclosure 14 in No. 1.]

Extract from the Cape Town Advertiser and Mail.

THE ALABAMA'S LAST PRIZE.—A very nice and knotty point is now under consideration by the governor; whether the Sea Bride is, or is not, a lawful prize to the Alabama, or whether the confederate has not been guilty of a breach of neutrality in capturing the Federal bark, at a point so near to British land. We understand, indeed, that two or three puzzling points are raised, some of them depending on mere ordinary evidence for settlement, and others requiring for their solution a reference to Vattel and the law of nations. First, then, what is the range to which extend the territorial waters of British possessions? To this the general reply is a league, based on the fact, as Vattel declares, that it was considered the utmost range of cannon-shot in the olden
[15] time when he wrote. Has this been in any way affected by the greater projectile force of Armstrongs and *Whitworths? The second question is, assuming the legal distance to have been three miles, was the Sea Bride at the time of her capture within that range of the nearest British land? This is entirely a case of

evidence, and the governor has been yesterday engaged in obtaining the best testimony bearing on the subject. The third is a nicer problem than either of the other two. On Wednesday night, the bark is alleged by some of her crew who were still on board to have drifted in within two miles of the light-house; while on Thursday she stood in again, and is alleged was clearly within British waters. How far, then, does this constitute a breach of neutrality, or how far does it support a claim to have the validity of the capture impugned? What answer will be given to all these queries by the governor, or what further steps he may think fit to take in consequence of them, is of course unknown. Both sides, however, may rely upon it that he will exert himself to the utmost to maintain a strict neutrality, and to secure fair and even-handed justice to all the parties concerned.

THE ALABAMA AND THE LAW OF NATIONS.

To the Editor of the Advertiser and Mail:

SIR: The capture of a Federal vessel by a confederate steamer within sight of a British port, and as some contend even in British waters, raises an interesting discussion as to the international legality or illegality of the proceeding. It is to be hoped that some of your numerous correspondents, legal or mercantile, interested, whether theoretically or practically, in the important point at issue will not fail to enter on the inviting field of inquiry. Will any one having access to the authorities and the ability to deal satisfactorily with the task, kindly oblige your readers by letting them know the exact state of the law on the question? We hear, on all sides, that three miles is the limit from shore within which the Sea Bride could have claimed the protection of the British flag; but is this undisputed, and where is the precise distance laid down in black and white? Or is it derived merely by reasoning from analogy—by varying cannon-range, for instance, hereafter mentioned?

I do not pretend to enter into the matter to advocate one side or the other, but in answer to the question just put, "Is this an undisputed rule?" would take the liberty of referring to a work published by Lord Mackenzie (one of the judges of the court of session in Scotland,) late in 1862, late enough, in fact, to have the advantage of treating also of the other international question arising out of the seizure of the Trent by the Federal San Jacinto, in November, 1861. Lord Mackenzie there says, (p. 152,) "The parts of the sea near the coast being in some degree susceptible of property, and of great importance to the safety of the country, are held by the modern law of nations to be comprehended within the territory of the state to which the coast belongs. To what distance a nation may extend its rights over the sea by which it is surrounded is a problem which has been a fruitful source of controversy, and is not easily determined. By most publicists the whole space of sea within cannon-shot of the coast is considered a part of the territory of the state, and for that reason a vessel captured within range of the cannon of a neutral port is not a lawful prize."

According to this legal authority, then, the latest as far as we know, the limit is not reckoned by "miles" but a limit of power reckoned by "cannon-range." And this seems in accordance with the doctrine of property in the sea laid down by Grotius ("De Jure Bell. et Pac." K. K. 2, ch. 3, sec. 13-2,) who says, "that the empire of a portion of the sea belongs to a territory, in so far as those who sail on that part of the sea can be compelled from the shore as if they were on land." This would seem materially to alter the features of the case. It raises the question, could a cannon planted at the farthest point of British dominion at the Cape, whether that point be (in theory) the stoop of the most projecting marine villa at Sea Point or the opposite coast of Robben Island, have thrown a ball, not alone into the Alabama, (for she may have kept out of reach,) but into the Sea Bride at any moment, from the commencement of the chase to the capturing close?

I may mention that in course of conversation subsequently on board the Alabama, I put the question to Captain Semmes as to what the limit was. His reply was three miles. Is it not rather, I asked again, within cannon-range? "That is just it," was his significant reply; in the olden days the "cannon-range" was taken as three miles. But cannons have improved and cannon-ranges much increased since those olden days, *vide* Blakeley's rifled five-miler, on the Alabama's very decks; and thus, in now interpreting the term "cannon-range," must we not, making allowance for this, assume the case of the most powerful piece of artillery modern science has invented? The question, then, if Mackenzie is to be relied on, comes to this, would such a
[16] cannon placed on the *farthest projecting point of Anglo-African land in the vicinity of the scene of capture have rescued the Sea Bride?

I am sure I only speak the sentiments of many who are anxious to get exact and reliable information on an interesting subject, when I express the hope that some local

"Vattel" will take up the question, treating it first on general principles of dominion in the sea, and then with reference to the particular subordinate case of the Alabama and Sea Bride.

WILKES.

[Inclosure 15 in No. 1.]

Extract from the Advertiser and Mail.

CAPE TOWN, *August* 10, 1863.

CONFEDERATE CAPTURE.—The governor has decided, in reply to the representations of the American consul, that the bark Sea Bride was a legitimate prize to the confederate cruiser Alabama. This decision has, of course, dissatisfied the protesters, and some of them indulge in rather tall talk of the manifest one-sidedness of British authorities, and of the terrible retribution that will one day befall them for it. That they should be dissatisfied is natural enough, and no one can refuse his sympathy to men who have lost so much so unexpectedly, and within so near a reach of perfect safety. But we cannot see how his excellency could have acted in any other way. He had, in the first place, the conflicting testimony of the captors and the captured; the former declaring that they were more than three miles from the shore, and the latter less. He therefore discarded both, and determined to rely upon the best official evidence he could procure from competent professional eye-witnesses on shore. Those whom he selected for that purpose, we believe, were the signal-men on the Lion's Rump, and the keeper of the two light-houses at Green Point and the Morville. The former had a perfect bird's-eye view of the whole affair, and it is his daily business to estimate and report to town the distance of vessels entering the bay. The two others, though not quite so practiced as the signal-man in such matters, have had frequent experience in the same judging distance sort of drill, and all three concurred in the opinion that the Sea Bride at the time of her capture was about four or five miles from the nearest point of shore, and that she was between four and six miles from the nearest point of Robbern Island. With facts like these the governor could hardly have done otherwise than to adjudicate as he did; and yet it must be remembered that his adjudication is by no means final. If the American representatives can procure reliable evidence, assigning a position to the bark within the territorial waters of the colony, it is quite within their power to avail themselves of it, and through their Government to adduce it before the court of St. James's, in London. The imperial government will thus have the whole case fully before them, and should it then appear that injustice had been done, there can be no doubt that ample redress will be given, and the question be fairly and equitably disposed of. The whole affair, however, it must not be forgotten, is one simply of evidence, and as far as the evidence taken hitherto has gone it seems to point very clearly against the claimants. The Americans resident here naturally complain, and with some bitterness, of what they consider the manifest sympathy which was shown with the confederate cause, in the person of the confederate commander Semmes, to an extent inconsistent with the neutrality which we profess. On this it must be remarked that much, if not most, of the enthusiasm shown was the result of mere curiosity, combined with that hero-worship which, for all sorts of apparent heroism, whether true or spurious, springs up instinctively in the human heart. At the same time, however, it cannot be denied that the extraordinary pluck displayed by the Confederate States while fighting for their independence has gained for them a sympathy which wholly overlooks the original grounds and origin of the strife. Such sympathy as this it is impossible to repress. Proclamations and decrees are powerless to oppose it, and are never intended to interfere with it. When we say therefore that we are neutral—and such undoubtedly the government of the Cape of Good Hope has in the present instance shown itself to be—it is true that a few official persons were foolish enough to show their own excessive sympathy with the confederate commander, but their indiscretion was quickly checked by the governor personally, who felt that by some of the steps proposed to be taken by them the neutrality of his government might be seriously compromised. Since the departure of the Alabama yesterday morning two American vessels entering Table Bay had a narrow escape. They were, however, warned off by some boats in the offing, and were wide awake enough to hug the shore so closely as to put the neutrality of their
[17] *position beyond dispute. While entering Table Bay again yesterday, another American, the Martha Wentzel, was seized, but was quickly liberated on its being clearly shown that at the time of her capture she was within the protection of the claimed league from the shore.

The confederate sailing-schooner Tuscaloosa put into Simon's Bay yesterday after effecting a capture off the coast within the last week or two. This was a China vessel, the Santa, bound for England; but having a British cargo on board, she was released

on giving bond for a ransom of $150,000. The Tuscaloosa gave chase to another clipper, the Snow Squall, and got near enough to fire into her. The fugitive, however, outstripped her in speed and got clear away.

In connection with this it will be interesting to the commercial world to know that Captain Semmes lays it down as a rule that whenever a *bona fide* British cargo is found on board an American bottom, the vessel is always released on payment of a ransom. In every other case the prize is remorselessly burnt and sunk. In addition to this it may be stated that for all his numerous captures he has to give account and establish a condemnation before an admiralty prize-court in the Confederate States. It is, therefore, his invariable rule to make a provisional, but formal, inquiry into each individual case as it arises, and record all the circumstances of it, and to register and preserve the evidence on which his provisional condemnation is based. Some of these judgments and other matters we shall publish in our mail issue next week.

THE STEAMER ALABAMA AND THE PRIZE BARK SEA BRIDE.—The steamer Alabama still remains in Table Bay. The Alabama, if the weather moderates, will probably leave for Simon's Bay this morning. She has taken in some supplies, such as biscuits, &c., and Mr. Cornhusk is preparing some boiler-plates and other articles which are necessary for the repair of her machinery. Captain Semmes has not left his vessel (except to pay a complimentary visit to Her Majesty's ship Valorous, and the East India and London Company's steamer Lady Jocelyn) since his arrival here and will not land at Cape Town. He is thoroughly alive to the paramount importance of the work he is engaged in, and puts off all idea of relaxation and repose until the war is over, and he may be able to draw a long breath. It was his intention to proceed to sea yesterday to take out of the Sea Bride such supplies as he wants, and then to burn her, but the severe weather of yesterday has prevented this. The American consul and the colonial government are meanwhile in correspondence respecting the legality of Captain Semmes's proceedings on Wednesday. The consul has put in the protest of the captain and mate of the Sea Bride, to prove that he was within two miles and a half of land, and, therefore, in neutral waters when seized by the Alabama. The government, on the other hand, has got the statements of the signal-man on the Lion's Rump that the bark was four miles off land, and of Captain Bissell, Mr. Wollarton and others, that she was more than three miles distant, and, therefore, beyond the neutral line. The consul, in addition to the protest alluded to, has received the evidence of the steward and seamen of the Sea Bride who were left on board at the capture until Thursday. They state that on Wednesday night a signal was made from the Alabama to burn the bark, and that tar-barrels were placed at different parts of the vessel, and ammunition piled in the cabin and forecastle for that purpose, but a subsequent signal from the Alabama seemed to countermand the order, and the bark lay on and off the port. At one time she was within one mile of Greenpoint light-house, and at another time about two miles from land, which is also considered contrary to the rules of neutrality, which provides that no prize is to be taken into British waters. The consul has asked that the prize be taken possession of by the Valorous until the question of legality is decided. The government, however, do not feel at present disposed to attempt any interference either with Captain Semmes or his prize.

No. 2.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *January* 23, 1864.

SIR: I have the honor to acknowledge the receipt of your letter of the 20th instant, inclosing copies of papers relating to the case of
[18] the bark Sea Bride, of Boston, captured * by the Alabama, and I have to state to you that those papers shall be considered by Her Majesty's government.

I am, &c.,

(Signed) RUSSELL.

No. 3.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *February* 8, 1864.

SIR: With reference to my letter of the 23d ultimo, I have the honor to state to you that Her Majesty's government have had under their consideration your letter of the 20th ultimo and its inclosures respecting the capture of the bark Sea Bride, of Boston, by the Alabama, and I have now to inform you that the governor of the Cape of Good Hope, in the neighborhood of which colony this vessel was seized, has reported himself satisfied by the evidence adduced before him that the capture in question was not made within British jurisdiction, and Her Majesty's government upon perusal of that evidence have arrived at a similar conclusion.

With respect to the claim founded upon the general argument set forth in your letter of the 23d of October last, which you are instructed to present, Her Majesty's government have only to repeat that they, in every respect and most advisedly, adhere to the answer which they have on former occasions had the honor to address to you in reply to that argument.

I am, &c.,
(Signed) RUSSELL.

NORTH AMERICA. No. 3. (1865.)

CORRESPONDENCE

ARISING OUT OF THE

CONFLICT BETWEEN THE KEARSARGE AND THE ALABAMA.

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CORRESPONDENCE ARISING OUT OF THE CONFLICT BETWEEN THE KEARSARGE AND THE ALABAMA.

No. 1.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, June 25, 1864. (Received June 25.)

MY LORD: I feel it my duty to submit to your consideration a copy of the official report of Captain Winslow, of the United States steamer Kearsarge, to the Secretary of the Navy, respecting the action which took place on Sunday last with the vessel first known at Liverpool as the gun-boat No. 290, and since under the name of the Alabama.

It would appear from this statement that a grave question has arisen as to the fact of the interference of a British vessel with a view to aid in effecting the escape of a number of persons belonging to the Alabama, who had already surrendered themselves as prisoners of war. These persons have been brought to this kingdom, and are believed to be in readiness to enter again into the same service on the first opportunity. Thus the system heretofore so frequently brought to your lordship's notice of making this island the base of hostile operations against the commerce of the United States is in danger of being carried on under a still more aggravated form.

I have the honor likewise to transmit a list of the names and official character of the persons who were picked up by the yacht Deerhound, and brought to this island. I feel it my duty to call your lordship's attention to the remarkable proportion of officers and of American insurgents in this list, as compared with the whole number of persons rescued from the waves. That this selection was made by British subjects with a view to connive at the escape of these particular individuals from captivity, I can scarcely entertain a doubt.

Inasmuch as the questions involved in this proceeding appear to me of a character too serious to justify my proceeding further without specific instructions, I shall now content myself with simply submitting these papers for the information of Her Majesty's government.

Renewing, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[Inclosure 1 in No. 1.]

Captain Winslow, U. S. N., to Mr. Welles.

KEARSARGE, *Cherbourg, France, June* 21, 1864.

SIR: I have the honor to report that towards the close of the action between the Alabama and this vessel, all available sail was made on the former, for the purpose of again reaching Cherbourg. When the object was apparent, the Kearsarge was steered across the bow of the Alabama for a raking fire, but before reaching this point the

Alabama struck. Uncertain whether Captain Semmes was not making some ruse, the Kearsarge was stopped. It was seen shortly afterward that the Alabama was lowering her boats. And an officer came alongside in one of them to say that they had surrendered, and were fast sinking, and begging that boats would be dispatched
[2] immediately *for saving of life. The two boats not disabled were at once lowered, and as it was apparent the Alabama was settling, this officer was permitted to leave in his boat to afford assistance.

An English yacht, the Deerhound, had approached near the Kearsarge at this time, when I hailed and begged the commander to run down to the Alabama, as she was fast sinking and we had but two boats, and assist in picking up the men. He answered affirmatively, and steamed towards the Alabama, but the latter sunk almost immediately. The Deerhound, however, sent her boats, and was actively engaged, aided by several others which had come from the shore.

These boats were busy in bringing the wounded and others to the Kearsarge, whom we were trying to make as comfortable as possible, when it was reported to me that the Deerhound was moving off. I could not believe that the commander of that vessel could be guilty of so disgraceful an act as taking our prisoners off, and therefore took no means to prevent it, but continued to keep our boats at work, rescuing the men in the water.

I am sorry to say that I was mistaken. The Deerhound made off with Captain Semmes and others, and also the very officer who had come on board to surrender.

I learnt subsequently that the Deerhound was a consort of the Alabama, and that she received on board all the valuable personal effects of Captain Semmes the night before the engagement.

I have, &c.,
(Signed) JNO. A. WINSLOW.

[Inclosure 2 in No. 1.]

List of officers and men belonging to the Alabama who were picked up by the British yacht Deerhound, and landed at Southampton.

Captain—Semmes.
Lieutenants—Kell and Sinclair.
Lieutenant—Howell, (Marines.)
Sailing-Master—Bullock.
Midshipmen—Maffit and Anderson.
Master's Assistants—G. T. Fulham, J. Evans, Muliner and Schroeder.
Engineer—O'Brien.
Gunner—Cuddy.
Captain's Clerk—Smith.
Petty Officers—J. Braesman, W. Crawford, W. Purdy, J. Dent, B. Johnston, C. Seymour, C. Steeson, J. Connor.
Firemen—O. Duffy, J. Foxon, W. Levins, M. McFarlane, J. Mason.
Seamen—T. McMillan, F. Townshend, R. Masters, G. Redman, H. Angel, W. McClellan, W. Hearn, L. Depoys, A. Pfiffer, F. Lennan, J. Mahan, P. Wharton, T. Kehoe, and R. Longshaw.

No. 2.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *June* 27, 1864.

SIR: I have the honor to acknowledge the receipt of your note of the 25th instant, complaining of the interference of a British vessel, the Deerhound, with a view to aid in effecting the escape of a number of persons belonging to the Alabama, who you state had already surrendered themselves prisoners of war, and calling my attention to the remarkable proportion of officers and American insurgents, as compared with the whole number of persons rescued from the waves. You state, further, that you can scarcely entertain a doubt that this selection was made by British subjects with a view to connive at the escape of these particular individuals from captivity.

I have the honor to state to you, in reply, that it appears to me that the owner of the Deerhound, of the royal yacht squadron, performed only a common duty of humanity in saving from the waves the captain

and several of the crew of the Alabama. They would otherwise, in all probability, have been drowned, and thus would never have been in the situation of prisoners of war.

It does not appear to me to be any part of the duty of a neutral to assist in making prisoners of war for one of the belligerents.

[3] *I shall, however, transmit to the owner of the Deerhound a copy of your letter and its inclosures, together with a copy of this letter.

I am, &c.,
(Signed) RUSSELL.

No. 3.

Mr. Hammond to Mr. Lancaster.

FOREIGN OFFICE, *June* 27, 1864.

SIR: I am directed by Earl Russell to transmit to you copy of a note and its inclosures from the United States minister at this court,[1] complaining of the course pursued by you in aiding the escape of a portion of the crew of the Alabama, who, it is alleged, had surrendered themselves as prisoners of war to the United States ship Kearsarge.

I also inclose a copy of the note which his lordship has addressed to Mr. Adams in reply.[2]

I am, &c.,
(Signed) E. HAMMOND.

No. 4.

The secretary to the admiralty to Mr. Hammond.

ADMIRALTY, *June* 27, 1864. (Received June 28.)

SIR: I am commanded by my lords commissioners of the admiralty to acquaint you, for the information of Earl Russell, that eleven men lately belonging to the confederate vessel Alabama were landed, on the 24th instant, at Eastbourne, from the smack Robert and Mary, of Southampton, last from Cherbourg.

The men stated they were picked up by the Kearsarge on Sunday last, and liberated at Cherbourg, and were then proceeding to London.

I am, &c.,
(Signed) C. PAGET.

No. 5.

Mr. Clarke to Earl Russell.

HINDLEY HALL,
Wigan, July 4, 1864. (Received July 5.)

MY LORD: On behalf of Mr. John Lancaster, I beg to acknowledge the receipt of your lordship's favor dated the 27th June, 1864, accom-

[1] No. 1. [2] No. 2.

panied with certain documents relating to that gentleman's part in the rescue of the captain and a portion of the crew of the Alabama on the 19th ultimo.

Mr. Lancaster left here on Monday last for Norway, whence he is expected to return about the latter end of next week. Immediately on his arrival at home the above-mentioned documents shall be submitted to him, and I have no doubt they will receive his prompt attention.

I take the liberty of drawing your lordship's attention to a letter from Mr. Lancaster, inserted in the Daily News of the 29th ultimo, (p. 5, col. 6,) a copy of which paper I inclose with this. The letter contains Mr. Lancaster's own narrative of his share in the proceedings to which it refers, and it will be seen that he therein emphatically denies many of the allegations advanced by Captain Winslow and inclosed by Mr. Adams.

I have, &c.,
(Signed) EDMUND CLARKE.

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[4] *[Inclosure in No. 5.]

Extract from the Daily News of June 29, 1864.

THE DEERHOUND, THE ALABAMA, AND THE KEARSARGE.

HINDLEY HALL, *Wigan, June 27.*

To The Editor of the Daily News:

SIR: As two correspondents of your journal, in giving their versions of the fight between the Alabama and the Kearsarge, have designated my share in the escape of Captain Semmes and a portion of the crew of the sunken ship as "dishonorable," and have, moreover, affirmed that my yacht, the Deerhound, was in the harbor of Cherbourg before the engagement, and proceeded thence on the morning of the engagement in order to assist the Alabama, I presume I may trespass upon your kindness so far as to ask for an opportunity to repudiate the imputation and deny the assertion. They admit that when the Alabama went down, the yacht, being near the Kearsarge, was hailed by Captain Winslow and requested to aid in picking up the men who were in the water; but they intimate that my services were expected to be merely ministerial; or, in other words, that I was to put myself under the command of Captain Winslow, and place my yacht at his disposal for the capture of the poor fellows who were struggling in the water for their lives. The fact is, that when we passed the Kearsarge the captain cried out, "For God's sake do what you can to save them," and that was my warrant for interfering in any way for the aid and succor of his enemies. It may be a question with some whether, without that warrant, I should have been justified in endeavoring to rescue any of the crew of the Alabama; but my own opinion is that a man drowning in the open sea cannot be regarded as an enemy at the time to anybody, and is, therefore, entitled to the assistance of any passer-by. Be this as it may, I had the earnest request of Captain Winslow to rescue as many of the men who were in the water as I could lay hold of, but that request was not coupled with any stipulation to the effect that I should deliver up the rescued men to him as his prisoners. If it had been, I should have declined the task, because I should have deemed it dishonorable—that is, inconsistent with my notions of honor—to lend my yacht and crew for the purpose of rescuing those brave men from drowning only to hand them over to their enemies for imprisonment, ill-treatment, and perhaps execution. One of your correspondents opens a letter by expressing a desire to bring to the notice of the yacht clubs of England the conduct of the commander of the Deerhound, which followed the engagement of the Alabama and Kearsarge. Now that my conduct has been impugned I am equally wishful that it should come under the notice of the yacht clubs of England, and I am quite willing to leave the point of "honor" to be decided by my brother yachtsmen, and, indeed, by any tribunal of gentlemen. As to my legal right to take away Captain Semmes and his friends, I have been educated in the belief that an English ship is English territory, and I am, therefore, unable even now to discover why I was more bound to surrender the people of the Alabama whom I had on board my yacht than the owner of a garden on the south coast of England would have been if they had swum to such a place and landed there, or than the mayor of Southampton was when they were lodging in that city, or than the British government is now that it is known that they are somewhere in England.

Your other correspondent says that Captain Winslow declares that "the reason he did not pursue the Deerhound or fire into her was that he could not believe at the time that any one carrying the flag of the royal yacht squadron could act so dishonorable a part as to carry off the prisoners whom he had requested him to save from feelings of humanity." I was not aware then, and I am not aware now, that the men whom I saved were or ever had been his prisoners. Whether any of the circumstances which had preceded the sinking of the Alabama constituted them prisoners was a question that never came under my consideration, and one which I am not disposed to discuss even now. I can only say that it is new doctrine to me, that when one ship sinks another in warfare, the crew of the sunken ship are debarred from swimming for their lives and seeking refuge wherever they can find it, and it is a doctrine which I shall not accept unless backed by better authority than that of the master of the Kearsarge. What Captain Winslow's notion of humanity may be is a point beyond my knowledge, but I have good reason for believing that not many members of the royal yacht squadron would, from "motives of humanity," have taken Captain Semmes from the water
[5] in order to give him up to the "tender mercies of Captain Winslow and his compatriots. Another reason for that hero's forbearance may be imagined in the reflection that such a performance as that of Captain Wilkes, who dragged two "enemies" or "rebels" from an English ship would not bear repetition. Your anonymous correspondent further says that "Captain Winslow would now have all the officers and men of the Alabama as prisoners had he not placed too much confidence in the honor of an Englishman who carried the flag of the royal yacht squadron." This is a very questionable assertion; for why did Captain Winslow confide in that Englishman? Why did he implore his interference, calling out, "For God's sake, do what you can to save them?" I presume it was because he could not or would not save them himself. The fact is, that if the captain and crew of the Alabama had depended for safety altogether upon Captain Winslow, not one-half of them would have been saved. He got quite as many of them as he could lay hold of time enough to deliver them from drowning.

I come now to the more definite charges advanced by your correspondents, and these I will soon dispose of.

They maintain that my yacht was in the harbor of Cherbourg for the purpose of assisting the Alabama, and that her movements before the action prove that she attended her for the same object. My impression is that the yacht was in Cherbourg to suit my convenience and pleasure, and I am quite sure that when there I neither did nor intended to do anything to serve the Alabama. We steamed out on Sunday morning to see the engagement, and the resolution to do so was the result of a family council whereat the question "to go out" or "not to go out" was duly discussed, and the decision in the affirmative was carried by the juveniles rather against the wish of both myself and my wife. Had I contemplated taking any part in the movements of the Alabama, I do not think I should have been accompanied with my wife and several young children.

One of your correspondents, however, says that he knows that the Deerhound did assist the Alabama, and if he does know this he knows more than I do. As to the movements of the Deerhound before the action, all the movements with which I was acquainted were for the objects of enjoying the summer morning, and getting a good and safe place from which to watch the engagement.

Another of your correspondents declares that since the affair it has been discovered that the Deerhound was a consort of the Alabama, and on the night before had received many valuable articles for safe-keeping from that vessel. This is simply untrue. Before the engagement neither I nor any of my family had any knowledge of or communication with either Captain Semmes, any of his officers, or any of his crew. Since the fight I have inquired from my captain whether he or any of my crew had had any communication with the captain or crew of the Alabama prior to meeting them on the Deerhound after the engagement, and his answer, given in the most emphatic manner, has been, "None whatever."

As to the deposit of chronometers and other valuable articles, the whole story is a myth. Nothing was brought from the Alabama to the Deerhound, and I never heard of the tale till I saw it in an extract from your own columns. After the fight was over, the drowning men picked up, and the Deerhound steaming away to Southampton, some of the officers who had been saved began to express their acknowledgments for my services, and my reply to them, which was addressed to all who stood around, was: "Gentlemen, you have no need to give me any special thanks. I should have done exactly the same for the other people if they had needed it." This speech would have been a needless, and indeed an absurd piece of hypocrisy, if there had been any league or alliance between the Alabama and the Deerhound.

Both your correspondents agree in maintaining that Captain Semmes and such of his crew as were taken away by the Deerhound are bound in honor to consider themselves still as prisoners, and to render themselves to their lawful captors as soon as practicable.

This is a point which I have nothing to do with, and therefore I shall not discuss it.

My object in this letter is merely to vindicate my conduct from misrepresentation; and I trust that in aiming at this I have not transgressed any of your rules of correspondence, and shall therefore be entitled to a place in your columns.

I am, &c.,
(Signed) JOHN LANCASTER.

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[6] *No. 6.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *July* 8, 1864.

SIR: With reference to my letter of the 27th ultimo, in which I stated that I should transmit to the owner of the Deerhound a copy of your letter of the 25th ultimo, I have the honor to inclose a copy of a letter from Mr. Edmund Clarke,[1] who, in Mr. Lancaster's absence in Norway, the acknowledged the receipt of my communication.

I am, &c.,
(Signed) RUSSELL.

No. 7.

Mr. Lancaster to Earl Russell.

HINDLEY HALL,
Wigan, July 16, 1864. (Received July 18.)

MY LORD: On my return here on Wednesday last, after a visit to Norway, I received your lordship's note of the 27th ultimo, together with copies of a note and its inclosures from the United States minister at the court of Her Majesty, complaining of the course pursued by me in aiding the escape of a portion of the crew of the Alabama, who, it is alleged, had surrendered themselves as prisoners of war to the United States ship Kearsarge.

In dealing with this complaint I shall not trouble your lordship with any remarks on the questions of maritime and international law which have arisen out of the circumstances connected with the sinking of the confederate ship the Alabama, but I shall confine myself to a succinct but complete narrative of those proceedings in which I was personally concerned.

I am, as your lordship has been informed, the owner of the yacht Deerhound, and a member of the royal yacht squadron. On the 7th June last my family, that is to say, my wife, my four children, and my niece, embarked on board the yacht, and sailed from Southampton with the view of cruising for about a fortnight around some of the Channel Islands, and beside the coast of France. Business engagements prevented me accompanying them, but I joined them at Guernsey on Saturday, June 11. On the same day we sailed for Jersey, in the neighborhood of which island we remained until the following Thursday, June 16. On the morning of that day we left St. Heliers for St. Malo, arriving there at 8 a. m. We detained the yacht in the harbor of St. Malo, and in the night slept therein. On the following morning (Friday) we left the yacht, ordering it to proceed to Cherbourg while we had a run

[1] No. 5.

into the interior. Early in the day we started by rail to Le Mans, and there stopped all night. Next morning (Saturday) we pushed on for Caen, and after refreshment and sight-seeing there we proceeded to Cherbourg, at which place we arrived about 10 o'clock at night. Prior to this time I had never seen Captain Semmes, nor had I had any communication, direct or indirect, with any person connected with the Alabama, and it will I think be admitted that at 10 o'clock on Saturday night it was too late to settle the terms of an alliance between my yacht and the confederate vessel for operations on Sunday morning. It is true that the Deerhound lay in Cherbourg during Friday night and Saturday; but my captain assures me that there was no intercourse during that time between him and Captain Semmes, or anybody acting on behalf of that confederate officer. So far from the Deerhound being, as has been alleged, the consort of the Alabama, there was no connection whatever between the two vessels, and the officers and crew of the one were strangers to the officers and crew of the other.

Soon after we arrived on board the yacht on Saturday night we heard the rumor that there was to be an engagement between the Alabama and the Kearsarge on the following morning, and the question came up for discussion in our family circle whether the Deerhound should put out to sea and take up a position where we could with safety witness something of the engagement between the two hostile ships; and as the juveniles were nearly all one way the question was decided in the affirmative rather against the wish of both myself and my wife. Accordingly at 9 o'clock in the morning we steamed out of Cherbourg Harbor to enjoy the summer breeze, and, if feasible, to see the great fight. That I did not propose to succor the Alabama in any way is manifest from the fact that I took my wife and family with me to participate in my movements and share my perils should I be exposed to any. At half-past 10 o'clock we saw the Alabama steaming out of the harbor toward
[7] the Federal vessel Kearsarge, and twenty minutes *afterward the action commenced. At half-past 12 o'clock we observed the Alabama to be disabled, and in a sinking state; and as I saw that no boats were being lowered from the Kearsarge to save the crew of the sinking ship, it occurred to me that the Kearsarge also must be disabled, and that her crew must be unable to help the people of the Alabama. Under this impression I felt it my duty to make toward the Kearsarge in order to offer assistance, and when within hail of that vessel I called out and asked whether I could afford them any help, and the answer was "No, but for God's sake do what you can to save them!" We immediately pushed toward the Alabama, and when within a distance of two hundred yards, she sank. This occurred at 12.50. We then lowered our two boats, and with the assistance of the Alabama's whaleboat and dingy, succeeded in saving about forty men, including Captain Semmes and thirteen officers. At 1 p. m. we steered for Southampton.

I acknowledge, my lord, that in leaving the scene of action so quickly I was animated with a wish to save from captivity Captain Semmes and the others whom we had rescued from drowning; but I should have done the same for the people of the Kearsarge if they had been placed in similar jeopardy. I am charged with having aided in the escape of men who "had surrendered themselves prisoners of war," but I did not know at the time that they had so surrendered. Whether, under the circumstances, they could be justly considered "prisoners of war," is a question which I will not presume now to discuss, inasmuch as it is not necessary for my justification. At the time when I rescued Captain Semmes and others from the water I had the warrant for so doing.

in the request from the captain of the Kearsarge that I would render them assistance. That request was not accompanied with any condition or stipulation, and therefore, having got as many of the drowning men on board as I could reach, I was not conscious of being under any obligation to consult the captain of the Kearsarge as to their disposal, and I took them as soon as possible to Southampton in compliance with their own earnest entreaties.

I trust, my lord, that this simple narrative will be sufficient to disprove the allegation of complicity or alliance between the confederate the ship Alabama and my yacht the Deerhound, and to show that in rescuing Captain Semmes and others from drowning I had the warrant of the captain of the Kearsarge, and that in taking them to Southampton I was actuated only by motives of humanity.

I am, &c.,
(Signed) JOHN LANCASTER.

No. 8.

Lord Lyons to Lord Russell.

WASHINGTON, *July* 8, 1864. (Received July 21.)

MY LORD: I have the honor to inclose an extract from a newspaper containing copies of official reports received by the Secretary of the Navy from Captain Winslow, of the engagement between the Kearsarge and the Alabama off Cherbourg.

I have, &c.,
(Signed) LYONS.

[Inclosure in No. 8.]

Extract from the National Intelligencer of July 8, 1864.

THE DESTRUCTION OF THE ALABAMA.—OFFICIAL REPORTS.—The Secretary of the Navy has received from Captain Winslow, of the United States steamer Kearsarge, the following official report of the engagement of that ship with the confederate steamer Alabama, and its results:

"KEARSARGE, *Cherbourg, France, June* 19, 1864.

"SIR: I have the honor to inform the Department that the day subsequent to the arrival of the Kearsarge off this port, on the 14th instant, I received a note from Captain Semmes, begging that the Kearsarge would not depart, as he intended to fight her, and would not delay her but a day or two.

"According to this notice the Alabama left the port of Cherbourg this morning at about 9.30 o'clock. At 10.20 a. m. we discovered her steering toward us. Fearing the question of jurisdiction might arise, we steamed to sea until a distance of six or
[8] seven *miles was attained from the Cherbourg breakwater, when we rounded to and commenced steaming for the Alabama. As we approached her, within about 1,200 yards, she opened fire, we receiving two or three broadsides before a shot was returned. The action continued, the respective steamers making a circle round and round, at a distance of about 900 yards from each other.

"At the expiration of an hour the Alabama struck, going down in about twenty minutes afterwards, and carrying many persons with her.

"It affords me great satisfaction to announce to the Department that every officer and man did their duty, exhibiting a degree of coolness and fortitude which gave great promise at the outset of certain victory.

"I have, &c.,
(Signed) "J. A. WINSLOW.

"HON. GIDEON WELLES,
"*Secretary of the Navy.*"

"KEARSARGE, *Cherbourg, France, June* 20, 1864.

"SIR: I inclose herewith the surgeon's report of the casualties on board this vessel in the late action with the Alabama. Although we received some twenty-five or thirty shots, twelve or thirteen taking effect in the hull, by the mercy of God we have been spared the loss of life; whereas, in the case of the Alabama, the carnage, I learn, was dreadful.

"The ships were about equal in match, the tonnage being the same; the Alabama carrying one 100-pounder rifle, with one heavy 68-pounder and six broadside 32-pounders; and the Kearsarge carrying four broadside 32-pounders, two 12-inch and one 28-pounder rifle—one gun less than the Alabama.

"The only shot which I fear will give any trouble is the 100-pounder rifle, which entered our stern-post, and remains at present unexploded.

"It would seem almost invidious to particularize the conduct of any one man or officer in an action in which all had done their duty with a fortitude and coolness which cannot be too highly praised; but I feel it due to my executive officer, Lieutenant-Commander Thornton, who superintended the working of the battery, to particularly mention him for an example of coolness and encouragement of the men while fighting, which contributed much towards the success of the action.

"Very respectfully, &c.,

(Signed) "J. A. WINSLOW.

"Hon. GIDEON WELLES,

"*Secretary of the Navy.*"

"KEARSARGE, *Cherbourg, France, June* 19, 1864.

"SIR: I report the following casualties from the engagement this morning with the Alabama:

"John W. Dempsey, quarter-gunner, compound fracture of right arm; arm amputated.

"William Gowin, ordinary seaman, compound fracture of left thigh and leg, seriously.

"James Macbeth, ordinary seaman, compound fracture of left leg; seriously wounded.

"Very respectfully,

(Signed) "JOHN W. BROWNE, *Surgeon.*

"Captain JOHN A. WINSLOW,

"*Commanding United States Steamer Kearsarge.*"

No. 9.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *July* 26, 1864.

SIR: With reference to my letter of the 8th instant, I have now the honor to transmit to you a copy of a letter which I have received from Mr. Lancaster,[1] containing his answer to the representations contained in your letter of the 25th ultimo, with regard to the course pursued by him in rescuing Captain Semmes and others, on the occasion of the sinking of the Alabama, and I have the honor to inform you that I do not think it necessary to take any further steps in the matter.

I am, &c.,

(Signed) RUSSELL.

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[1] No. 7.

[9] * No. 10.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, September 6, 1864. (Received September 7.)

SIR: I have hitherto delayed to acknowledge the reception of the several notes I have had the honor to receive from your lordship, of the 27th of June, the 8th and 26th of July, in reply to mine of the 25th of June, on the subject of the interference of the owner of the yacht Deerhound, from a desire that the Government which I have the honor to represent should be enabled, before instructing me to act, to gain as complete information of the facts in the case as possible. It is not until very lately that I have been placed in full possession of its views, after a full consideration of the evidence connected with that transaction. I shall now proceed to submit the substance of them to your lordship's consideration.

To the better understanding of the case, I trust I may be pardoned if I recall your attention to the position heretofore taken by my Government in regard to the vessel originally known as the gun-boat No. 290, and latterly the Alabama.

The circumstances attending the construction, outfit, armament, manning, and navigation of that vessel are too well known, and have been too fully exposed in the correspondence which I have heretofore had the honor to conduct with your lordship, to need to be further dwelt upon.

I am instructed to say that, in view of all these, my Government adheres to its previous declarations, and does not recognize the Alabama as a ship of war of a lawful belligerent power.

In connection with this point, and to guard against injurious inferences, it is proper for me to add that the proceeding of Captain Winslow in paroling and discharging the men who fell into his hands, has been formally disapproved.

Your lordship will now permit me to call your attention to the statement made by me in my former note. It was in substance this: That while engaged in a successful effort to destroy this piratical vessel and to capture her crew, the owner of a British vessel belonging to the Royal Yacht Association, being a spectator, so far interposed his aid as to effect the escape of certain members of the crew well known to be the chief agents in the navigation of that vessel, and most bitter enemies of the people of the United States.

I regret to be compelled, after a survey of all the evidence since produced, to repeat this allegation, and to superadd another, which appears still more grave, to wit, that this was done by him in connivance with the very officer and boat's crew of the Alabama who had first been sent to the commander of the Kearsarge for the purpose of surrendering them all as prisoners of war. Neither does it relieve this transaction of any of its gravity to know that the officer commanding that boat was himself a British subject.

Your lordship is pleased to remark, in your note of the 27th of June, concerning this act of the owner of the Deerhound, that he appears to have performed only a common duty of humanity in saving from the waves the captain and several of the crew of the Alabama, who would otherwise have been drowned, and thus would never have been in the situation of prisoners of war.

Unfortunately for this hypothesis it does not appear that the owner

of the Deerhound did rescue the principal persons from drowning. The only individual whose safety he appears to have taken pains to secure was Captain Semmes. The evidence seems to show that much the greater proportion were rescued by the commanders and crews of the enemy's three boats, the principal one of which had been sent to the Kearsarge to make a surrender and to ask for aid to rescue them. It further appears that after authority had been given to perform this common duty of humanity, great efforts were made to select the chief enemies of the United States and transfer them, not in accordance with the obligation originally incurred, to the Kearsarge, but to the hands of the owner of the Deerhound, another British subject, who had likewise been asked to assist, but who, instead of laboring further in the cause of humanity, hastened at once on the reception of these obnoxious persons, paying no further regard to the larger number of his own countrymen still left struggling with the waves, to place them where he believed they would be beyond the reach of recovery by the victor.

But I must pray permission to go further, and to question your lordship's proposition that a third party, professing to be neutral, performs a common duty of humanity in interposing in a struggle between combatants to save those only of one side. On the contrary, so far as he may be successful, he appears to make himself a party to a continuance of strife and bloodshed. The men engaged in the Alabama were all acting in deadly hostility to the people of the United States. They were either prisoners or desperately pursued by the Kearsarge.

10] If they had perished, the latter would have had the *advantage of a lawful destruction of so many enemies. If they had been rescued by the Kearsarge with or without the aid of the Deerhound, then the surrender of those persons already made would have been perfected, and they would have been prisoners. In neither case would they have remained hostile combatants. The Deerhound, by conniving at the escape of these men, and furnishing the necessary means to it by carrying them within a foreign jurisdiction, deprived the United States to a corresponding extent of the fruits of a long and costly pursuit and successful battle.

It is not herein pretended that it is any part of the duty of a neutral to assist in making captures for a belligerent. It is, nevertheless, as confidently affirmed that, instead of neutrality, it is direct hostility for a neutral to interpose in a battle so far as to rescue men of one side who have been driven to surrender, and then convey them away surreptitiously from under the guns of the victor, thereafter to resume their hostility just as if they had never been overcome.

The irritation naturally created by such a proceeding in any case is much more aggravated when it comes to be considered that this vessel was built, armed, manned, and equipped in the ports of the neutral country to which the Deerhound itself belongs, that her departure and subsequent depredations are the consequence of a failure to perform a recognized duty of prevention, and that the harboring of these persons after a rescue so made is only likely to terminate in efforts to renew these offensive acts from the same country in which the wrong was first committed.

In view of all these circumstances I regret to be compelled to communicate to your lordship the expression of the President's surprise that Her Majesty's government does not find in the proceedings of the owner of the Deerhound cause of severe censure or regret. And this is the more sensibly felt that that person has not hesitated to avow in his

own letter that he was actuated by a desire to withdraw these enemies of the United States from the power of their conquering vessel.

I am, however, directed to say that my Government does not for a moment believe that any of the proceedings referred to, whether relating to the chief wrong-doer commanding the hostile vessel, to the yacht Deerhound, or to those British subjects who have not scrupled either publicly to declare their sympathy with or privately to aid and abet the violators of Her Majesty's neutrality, are viewed with any other sentiments than those of regret and disappointment by the members of Her Majesty's government.

Nevertheless, it appears to be a solemn obligation of my Government, in view of all the grave consequences of such a proceeding, to sum up the conclusions to which, from a full consideration of the facts, it has now arrived:

1. The incidents as heretofore explained confirm the soundness of the opinion previously insisted upon, that the Alabama is justly to be regarded as to have attained at no point of time any other national character than that which may have attached to it from its construction, outfit, equipment, armament, and manning by British subjects out of British ports.

2. That the persons who escaped from this vessel, thus fitted out by British subjects engaged in making unlawful war against the United States, after voluntary surrender as prisoners of war, by reason of the unlawful intervention of the commander of the British yacht Deerhound, and the conveyance of them within the jurisdiction of Great Britain, ought to be delivered up to the United States.

3. That the continuance of these persons to receive from any British authorities or subjects pecuniary assistance or supplies, or the regular payment of wages for the purpose of more effectually carrying on hostile operations from this kingdom as a base, is a grievance against which it is my duty to remonstrate, and for which to ask a remedy in their conviction and punishment.

4. The occasion has been thought to warrant a direction to me to ask with earnestness of Her Majesty's government that it should adopt such measures as may be effective to prevent the preparation, equipment, and outfit of any further naval expedition from British shores to make war against the United States.

In making these representations I am instructed to assure your lordship that the President is far from seeking causes of offense on the part of Great Britain. But he is charged with the duty of maintaining the belligerent rights of the United States on the high seas, as they are recognized by the law of nations, against all lawless combination and resistance. He therefore trusts that Her Majesty's government will consider the subject in a just and candid spirit, and himself as asking from it in this case, only what, if the situation of the parties were reversed, would have been conceded to any similar request based on equally cogent considerations.

I pray, &c.,

(Signed) CHARLES FRANCIS ADAMS.

[11] *No. 11.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *September* 12, 1864.

SIR: I have the honor to acknowledge the receipt of your letter of the 6th instant, respecting the case of the Alabama, and the proceedings, on the occasion of the sinking of that vessel, of the owner of the Deerhound; and I have to inform you that your communication will receive a reply as soon as it can be prepared.

I am, &c.,
(Signed) RUSSELL.

No. 12.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *September* 26, 1864.

SIR: I have to acknowledge the receipt of your letter of the 6th of this month, upon the subject of the officers and men belonging to the Alabama, who were saved by the owner of the Deerhound yacht from drowning, and were afterwards landed at Southampton. It is not my intention, in replying to that letter, to repeat arguments already exhausted, or to refer to observations already made. It seems to be sufficient that I should state to you the conclusions at which Her Majesty's government have arrived, and which differ from those which your Government have come to from the same facts.

In the first place, it is undoubtedly true that the Alabama was partly fitted out in a British port. But as soon as evidence was obtained that acts had been committed with regard to that vessel in violation of a British statute, orders were sent to seize her; she, however, escaped from British waters in a state of half equipment, under a fraudulent pretense of making a trial trip. Her equipment was afterwards completed in a foreign port, neither British nor American, and a commission from the so-styled confederate government was there delivered to Captain Semmes, her commander, himself an American citizen.

2dly. I have to state that it appears to Her Majesty's government that the commander of the private British yacht, the Deerhound, in saving from drowning some of the officers and crew of the Alabama, after that vessel had sunk, performed a praiseworthy act of humanity, to which, moreover, he had been exhorted by the officer commanding the Kearsarge, to which vessel the Deerhound had, in the first instance, gone, in order to offer to the Kearsarge any assistance which, after her action with the Alabama, she might stand in need of; and it appears further to Her Majesty's government that, under all the circumstances of the case, Mr. Lancaster was not under any obligation to deliver to the captain of the Kearsarge the officers and men whom he had rescued from the waves.

But, however that may be, with regard to the demand made by you, by instructions from your Government, that those officers and men should now be delivered up to the Government of the United States as being escaped prisoners of war, Her Majesty's government would beg to observe that there is no obligation by international law which can bind the government of a neutral state to deliver up, to a belligerent, prisoners of war who may have escaped from the power of such bellig-

erent, and may have taken refuge within the territory of such neutral. Therefore, even if Her Majesty's government had any power by law to comply with the above-mentioned demand, Her Majesty's government could not do so without being guilty of a violation of the duties of hospitality.

In point of fact, however, Her Majesty's government have no lawful power to arrest and deliver up the persons in question. They have been guilty of no offense against the laws of England, and they have committed no act which could bring them within the provisions of the treaty between Great Britain and the United States for the mutual surrender of offenders, and Her Majesty's government are therefore entirely without any legal means by which, even if they wished to do so, they could comply with your above-mentioned demand.

3dly. With regard to the statement made to the United States Government that British authorities afford pecuniary assistance or supplies, or furnish regular payment of wages to persons forming the crew of the Alabama, for the purpose of enabling them more effectually to carry on hostile operations against the United States, I have to say that Her Majesty's government have no knowledge whatever of any such circumstances, and do not believe that there is any foundation for such
[12] statements. Private individuals may *very possibly have contributed to relieve the necessities of the persons in question, but with the pecuniary contributions of private individuals Her Majesty's government have no power to interfere.

I beg further to assure you that Her Majesty's government have adopted, and will continue to adopt to the utmost of their lawful power, such measures as may be effective to prevent the preparation, equipment, and outfit of any naval expedition from British shores to make war against the United States.

The detention and seizure of the Birkenhead iron-clads, and the discussions in Parliament on that subject, suffice to show that if complete prevention in this respect has not been attained, all that the government of this free country can do to stop such expeditions has been fully performed.

Lastly, in expressing the regret of Her Majesty's government that they should find themselves unable to comply with any application which the Government of the United States may have thought themselves entitled to make, I cannot refrain from observing that Her Majesty's government have been far more successful in preventing breaches of neutrality with regard to the fitting out of cruisers to take part in the civil war in North America than the Government of the United States were in preventing the fitting out of ships of war to aid the South American republics in their revolt against Spain, which power then stood in the position of a central authority resisting insurrection.

I am, &c.,
(Signed) RUSSELL.

No. 13.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES.
London, September 27, 1864. (Received September 28.)

MY LORD: I have the honor to acknowledge the reception of your

note of the 26th instant, communicating to me the conclusions at which Her Majesty's government have arrived on the representations which I submitted on the 6th instant, under special instructions, respecting the proceedings of the owner of the yacht Deerhound, and the collateral questions involved therein.

Regretting to perceive so wide a divergency in the views taken by the two governments of a subject involving grave principles of law, not less than important rules of international comity, I shall not venture upon the consideration of the contents of your lordship's note in advance of their passing under the examination of my Government. Meanwhile I shall avail myself of the earliest opportunity to transmit the paper to the United States, and await the return of further instructions.

I pray, &c.,

(Signed) CHARLES FRANCIS ADAMS.

No. 14.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, November 10, 1864. (Received November 11.)

MY LORD: In regard to the note of the 26th of September last which your lordship did me the honor to address to me, I now ask permission to make only two observations, preliminary to communicating to you the final instructions of my Government.

Your lordship is pleased to remark that Her Majesty's government consider the act of the commander of the Deerhound, in interposing to save from drowning Captain Semmes and other officers and men of the Alabama, as a praiseworthy act of humanity; and, further, that any proposal to restore them to the hands of the victors in the struggle after they had reached the limits of this kingdom as a refuge could be viewed only as involving a violation of the duties of hospitality, of which that government would not be guilty.

I beg leave to recall your lordship's attention to the original allegation in my note, which was to the effect that Captain Semmes and his companions, after being saved from drowning by the intervention of a British subject, did not reach the limits of this kingdom as a refugee claiming the right of hospitality, so much as in the position of a belligerent determined to make his escape from capture or death to a neutral territory useful to himself and his cause by initiating further
[13] hostile proceedings against his enemy in the *very place where he claimed hospitality. I have the strongest reasons for believing that the time which has passed whilst I have had the honor to conduct this correspondence with your lordship has been spent by the enemies of the United States, British and native-born, in fitting out another vessel from this kingdom to do the same sort of piratical work which the Alabama did until she was sent to the bottom, which vessel has sailed from here to an agreed place on the ocean where the same sort of equipment and armament which was placed on the Alabama has been placed on board of her by another British vessel sent from this kingdom for the purpose, and where were transferred Captain Semmes and his companions, the persons saved by the alleged humanity of Mr. Lancaster, for the ultimate object of continuing a war of de-

struction of life and property against the people of the United States. Whether I am correct or not in these statements, as yet founded only on information of a private character, time will not be long in establishing. Should I prove to be so, your lordship will, perhaps, pardon me if I persist in maintaining the opinion that neither was the act of Mr. Lancaster in saving Captain Semmes from capture humane, nor is the act of Her Majesty's government in protecting him to be viewed as wholly within the limits of that sort of hospitality which it would value in any other nation if practiced towards the people of Great Britain.

Your lordship is pleased further to observe, towards the close of your note, that Her Majesty's government have been far more successful in preventing breaches of neutrality with regard to the fitting out of cruisers in this war than the Government of the United States were in preventing the fitting out of ships to aid the South American republics in their revolt against Spain.

Were it expedient at this late day to enter upon an examination of the relative merit of the two governments in two very widely different stages of their condition, in acquitting themselves of their obligations of neutrality under circumstances of difficulty, I am not aware that any result which might be arrived at would have an effect in materially varying the views that should be taken of the short-comings of either. Very fortunately I am saved the necessity of further discussion of it, by pointing out to your lordship a circumstance which seems to have entirely escaped your attention. Whatever may have been the deficiencies of the United States in the instance alluded to, compensation therefor has been made to Spain, and her full and free release has been given under the sanction of her hand to a solemn treaty. Whenever Her Majesty's government shall acknowledge itself prepared to perfect the parallel instance, the example may be cited against the United States, but not until then.

I have now the honor to inform your lordship that, after a careful consideration of your note of the 26th of September, my Government thinks itself entitled to adhere to the several positions it has heretofore assumed in regard to the painful transaction in question, as these have been made known through me to Her Majesty's government. I am further directed to express to you the President's concern at the failure thus far of the efforts that have been made to avert a misunderstanding between the two countries upon a point which the American people have come to regard as seriously affecting their national honor and dignity.

Praying, &c.,
(Signed) CHARLES FRANCIS ADAMS.

No. 15.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *November* 29, 1864.

SIR: In acknowledging your letter of the 10th instant, I have no wish to prolong the controversy between us on the topic of the Deerhound, and the rescue of Captain Semmes and other persons from drowning. On the general subject I refer you to the dispatch which I

have addressed to Lord Lyons, and of which I have had the honor to send you a copy in my note of this day.[1]

There are, however, two points to which I wish to call your attention.

The first is that you have omitted to notice the gist of my answer to your complaint.

The question is not so much whether the act of the commander of the Deerhound in interposing to save from drowning Captain Semmes and other officers and men of the Alabama was "a praiseworthy act of humanity," and whether any proposal to restore them to the hands of the victors in the struggle after they had reached the limits of this kingdom could be viewed only "as a violation of the duties of
[14] hospitality"—these consid*erations, I say, are not so much at issue as the question, what is the legal obligation with regard to these matters of Her Majesty's government towards the United States? On this question I affirm:

1. That the municipal law of this kingdom gave the government no power or authority to deliver up to the United States Captain Semmes, his officers and men.

2. That the law of nations does not impose upon the government of the United Kingdom the duty of delivering up to the United States persons in the condition of Captain Semmes and such of his officers and men as had taken refuge in this kingdom.

The next point regards the differences between the United States and Spain to which I referred. I do not wish to go fully into it now, although I may hereafter do so in correspondence with the Government of the United States. I will only point out at present the nature of the complaint made by the Spanish minister in 1818, and the tenor of the principal article of treaty by which the differences between Spain and the United States were adjusted.

Señor de Onis, the Spanish minister at Washington, wrote on the 16th of November, 1818, to the United States minister to the following effect:

> Whatever may be the forecast, wisdom, and justice conspicuous in the laws of the United States, it is universally notorious that a system of pillage and aggression has been organized in several ports of the Union against the vessels and property of the Spanish nation, &c.

After a long negotiation the complaints of Spain were satisfied by a treaty signed on the 22d of February, 1819. Article IX of that treaty states that "the high contracting parties, animated with the most earnest desire of conciliation, and with the object of putting an end to all the differences which have existed between them, and of confirming the good understanding which they wish to be forever maintained between them, reciprocally renounce all claim for damages or injuries which they themselves, as well as their respective citizens and subjects, may have suffered until the time of signing this treaty."

Whether such a treaty would furnish any elements for negotiation between our two governments I am not prepared to affirm. But it can scarcely be said that this treaty arrangement for the mutual abandonment of claims constituted a specific grant of compensation to Spain by the United States for injuries complained of by Spain.

I am, &c.,
(Signed) RUSSELL.

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[1] See North America, (No. 1,) 1865, p. 25.

No. 16.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
December 1, 1864. (Received December 2.)

MY LORD: I have had the honor to receive your note of the 29th of November in reply to mine of the 10th of that month on the subject of the Deerhound.

The reason why I omitted to enter into the discussion of the main points of your lordship's note of the 26th of September was that I had been directed by my Government to present the conclusion to which it had come from a full examination of them, which appeared to render further argument on my part superfluous; otherwise it would have given me great pleasure to examine the questions: 1st, how far the absence of statute-law depending on volition can be urged in extenuation of the omission to fulfill the acknowledged obligations of international law; and, 2d, how far the acknowledgment of the right of asylum by a neutral power is admitted by international law, to tolerate the harboring of enemies, abusing that right for the purpose of more effectually injuring the people of a friendly nation. But I forbear because I have no authority to prolong the controversy, and I join with your lordship in adding that I have no such desire.

With regard to your lordship's notice of my reference to the treaty of the United States with Spain as not sustaining the allegation contained in my notes which foreclosed all possibility of drawing the parallel between the action of the two nations which was attempted in your note of the 26th of September, I may only be permitted to repeat my surprise that the passage referred to should even yet have so completely escaped your lordship's attention. Had you passed from the ninth article, which you quote, to the tenth, which recapitulates the claims released and surrendered on each side, you would have found on the part of Spain an express renunciation of four classes of claims, the two last of which are in the following words:

3. To all injuries caused by the expedition of Miranda, that was fitted out and equipped at New York.

[15] *4. To all claims of Spanish subjects upon the Government of the United States arising from unlawful seizures at sea or within the ports or territorial jurisdiction of the United States.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

No. 17.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *December* 3, 1864.

SIR: I have the honor to acknowledge the receipt of your letter of the 1st instant, in reply to my letter of the 29th ultimo, on the subject of the Deerhound.

I am, &c.,
(Signed) RUSSELL.

*NORTH AMERICA. No. 1. (1866.)

CORRESPONDENCE

RESPECTING

THE SHENANDOAH.

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CORRESPONDENCE RESPECTING THE SHENANDOAH.

No. 1.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, April 7, 1865. (Received April 8.)

MY LORD: I have the honor to transmit to you a copy of a letter addressed to the Secretary of State at Washington by the consul of the United States at Rio Janeiro, Mr. Monroe, making a report of the depredations committed upon the commerce of the United States by the vessel known in the port of London as the Sea King, but since transformed into the Shenandoah by a process already fully explained in a note which I had the honor to address to your lordship on the 18th November last.

I regret to be obliged to add that this same vessel has been, since the date of Mr. Monroe's letter, heard of at Melbourne, from which place further details of similar outrages have been received. The particulars have been communicated to my Government, but there has not yet been sufficient time for me to obtain its instructions in regard to them. I cannot doubt, however, that they will be the same in substance as those embraced in the last dispatch.

Were there any reasons to believe that the operations carried on in the ports of Her Majesty's kingdom and its dependencies to maintain and extend this systematic depredation upon the commerce of a friendly people had been materially relaxed or prevented, I should not be under the painful necessity of announcing to your lordship the fact that my Government cannot avoid entailing upon the government of Great Britain the responsibility for this damage. It is impossible to be insensible to the injury that may yet be impending from the part which the British steamer City of Richmond has had in being suffered to transport with impunity from the port of London men and supplies, to place them on board of the French-built steam-ram Olinthe, *alias* Stoerkodder, *alias* Stonewall, which has through a continuously fraudulent process succeeded in deluding several governments of Europe, and in escaping from this hemisphere on its errand of mischief in the other.

I am by no means insensible to the efforts which have already been made, and are yet making, by Her Majesty's government to put a stop to such outrages in this kingdom and its dependencies. Neither can I permit myself to doubt the favorable disposition of her ministers to maintain amicable relations with the Government which I represent.

While perfectly ready to bear testimony to the promptness with which all the numerous remonstrances and representations which it has been my painful duty heretofore to submit have been met and attended to by your lordship, it is, at the same time, impossible for me to dispute the fact that the hostile policy which it is the object of all this labor to prevent has not only not been checked, but is even now going into execution with more and more complete success.

That policy, I trust I need not point out to your lordship, is substantially the destruction of the whole mercantile navigation belonging to the people of the United States. The nature of the process by which this is coming about may readily be appreciated by a brief examination of the returns of the registered tonnage of Her Majesty's kingdom for the last six years. I have the honor to append to this note a tabular statement of the number of merchant-ships built, and of the tonnage owned in the United States, which have been transferred to British owners in the successive years beginning with 1858 and ending in 1864, so far as the materials at hand from the official reports of the two governments can supply the information.

I trust that it will be needless for me to do more than to point out to your lordship the inference deducible from this statement, to wit,
[2] that the United States commerce is *rapidly vanishing from the face of the ocean, and that that of Great Britain is multiplying in nearly the same ratio. Furthermore, it is my painful duty to suggest that this process is going on by reason of the action of British subjects, in co-operation with emissaries of the insurgents, who have supplied from the ports of Her Majesty's kingdom all the materials, such as vessels, armament, supplies, and men, indispensable to the effective prosecution of this result on the ocean. So far as I am aware, not a single vessel has been engaged in these depredations excepting such as have been so furnished; unless, indeed, I might except one or two passenger-steamers belonging to persons in New York, forcibly taken possession of while at Charleston in the beginning of the war, feebly armed and very quickly rendered useless for any aggressive purpose. It may then, on the face of this evidence, be fairly assumed as true that Great Britain, as a national power, is in point of fact fast acquiring the entire maritime commerce of the United States by reason of the acts of a portion of Her Majesty's subjects engaged in carrying on war against them on the ocean during a time of peace between the two countries. I deeply regret to be constrained to add that every well-meant effort of Her Majesty's government to put a stop to this extraordinary state of things down to this time has proved almost entirely fruitless.

I would most respectfully invite your lordship to produce in the history of the world a parallel case to this of endurance of one nation of injury done to it by another, without bringing on the gravest of complications. That in this case no such event has followed, has been owing, in the main, to a full conviction that Her Majesty's government has never been animated by any aggressive disposition toward the United States; but, on the contrary, that it has steadily endeavored to discountenance and, in a measure, to check the injurious and malevolent operations of many of her subjects. But while anxious to do full justice to the amicable intentions of Her Majesty's ministers, and on that account to forbear from recourse to any but the most friendly and earnest appeals to reason and to their sense of justice for the rectification of these wrongs, it is impossible to resist the conviction that heretofore their measures, however well intended, have never proved effective to remedy the evil complained of. Prompt to acquit them of any design, I am reluctantly compelled to acknowledge the belief that practically this evil had its origin in the first step taken, which never can be regarded by my Government in any other light than as precipitate, of acknowledging persons as a belligerent power on the ocean before they had a single vessel of their own to show floating upon it. The result of that proceeding has been that the power in question, so far as it can be entitled to the name of a belligerent on the ocean at all, was actually created in conse

quence of the recognition, and not before; and all that it has subsequently attained of such a position has been through the labor of the subjects of the very country which gave it the shelter of that title in advance. Neither is the whole case stated even now. The results equally show that the ability to continue these operations with success during the whole term of four years that the war has continued, has been exclusively owing to the opportunity to make use of this granted right of a belligerent in the courts and the ports and harbors of the very power that furnished the elements of its existence in the outset. In other words, the kingdom of Great Britain cannot but be regarded by the Government I have the honor to represent as not only having given birth to this naval belligerent, but also as having nursed and maintained it to the present hour.

In view of all these circumstances, I am instructed, while insisting on the protest heretofore solemnly entered against that proceeding, further respectfully to represent to your lordship that, in the opinion of my Government, the grounds on which Her Majesty's government have rested their defense against the responsibility incurred in the manner hereinbefore stated, for the evils that have followed, however strong they might have heretofore been considered, have now failed by a practical reduction of all the ports heretofore temporarily held by the insurgents. Hence the President looks with confidence to Her Majesty's government for an early and an effectual removal of all existing causes of complaint on this score, whereby the foreign commerce of the United States may be again placed in a situation to enjoy the rights to which it is entitled on the ocean in peace and safety, free from annoyance from the injurious acts of any of Her Majesty's subjects, perpetrated under the semblance of belligerent rights.

I am further instructed to invite the attention of your lordship to another subject in this immediate connection. From the beginning of this war the armed vessels of Her Majesty have continued to enjoy full and free pratique in the waters of the United States. They have been welcomed in just the same friendly manner as has been heretofore customary when there was no exclusion of the same class of ships of the United States from the waters of Great Britain. It is the opinion of the President that the time has come when it may be asked, not only with strict right, but also with entire comity, when the reciprocity in these hospitalities is to be restored. It is the expectation that the
[3] naval *force of the United States in European waters will be augmented on or about the beginning of next month, when this question may become one of some interest. I am therefore directed to solicit information from your lordship as to the reception which those vessels may expect in the ports of this kingdom.

I pray, &c.,

(Signed) CHARLES FRANCIS ADAMS.

[Inclosure 1 in No. 1.]

Mr. Monroe to Mr. Seward.

CONSULATE OF THE UNITED STATES,
Rio de Janeiro, November 29, 1864.

SIR: I am pained to be compelled to report to the Department that a new piratical steamer called the Shenandoah, commanded by James W. Waddell, is engaged in destroying our merchant-vessels near the equator, on the highway of communication

between the United States and the ports of South America. The facts presented below were obtained in part from protests recorded at this office by the masters of the Alina and the D. Godfroy, and in part from statements published in the Brazilian newspapers, and believed to be reliable.

The bark Alina, Staples master, of 573 tons burden, sailed from Newport, England, on the 6th October, with a cargo of railroad-iron, bound for Buenos Ayres. Having reached latitude 16° 40′ north and longitude 26° 45′ west, she was captured and sunk on the 29th October by the Shenandoah. The schooner Charter Oak, from Boston, bound for San Francisco, was captured and destroyed by the same pirate on the 5th of November in latitude 7° north, longitude 27° 3′ west.

On the 7th November the bark D. Godfroy, Hallett master, from Boston, of 300 tons burden, bound for Valparaiso with general cargo, was captured and burnt by the Shenandoah in latitude 6° 25′ north and longitude 27° 15′ west. On the 10th of November, in latitude 4° 30′ north and longitude 26° 40′ west, the brig Susan of New York, bound from Cardiff to Rio Grande, was also destroyed by the same steamer.

On the 12th November the Shenandoah captured the ship Kate Prince, of 995 tons burden, Libbey master. The Kate Prince belongs in Portsmouth, New Hampshire, and was on her passage from Cardiff to Bahia with a cargo of coal. She was captured in latitude 2° 30′ north and longitude 28° 30′ west, and having been compelled to give bonds in the sum of $40,000 was allowed to continue her voyage. These five vessels were all American. The officers and crews were at first transferred to the Shenandoah; afterward, as opportunity offered, a part were sent to Bahia on the Kate Prince, a part to this port on the Danish brig Anna Jans, from New York, and the rest, so far as heard from, had been retained on the Shenandoah; of these last, some by threat and promises had been induced to engage in the piratical service.

In another instance a vessel not under our flag narrowly escaped destruction. The Argentine bark Adelaide, Williams master, bound from Baltimore to this city, was boarded by officers of the Shenandoah on the 12th November in latitude 1° 46′ and longitude 29° west. The Adelaide was consigned to Phipps, Brothers & Co., of this city. It was at first decided to burn her, and straw and tar had been brought for this object; this purpose, however, was finally abandoned, and the pirates, after having opened letters, destroyed furniture, and committed other outrages, retired on board the Shenandoah, carrying a part of the provisions of the bark with them. Captain Williams states that the commander of the Shenandoah declared he would hereafter burn all cargoes belonging to American owners, by whatever flag they might be covered.

The following statement in regard to the Shenandoah is made by ship-masters who have been prisoners on board of her:

"The Shenandoah is a steamship of 1,100 tons burden, and 250 horse-power. She carries a battery of four 68-pounders and two 12-pounders, all smooth-bore, and two 32-pounders, rifled.

"She was formerly called the Sea King, and belonged to the steam company trading between London and Bombay and Calcutta. She was built by Stevens & Sons of Glasgow, in 1863, and makes eleven miles an hour. She has forty-three men, nearly all English, besides the officers. She cleared from London for Bombay in September of this year."

On the 27th instant the Anna Jans brought into this port the following officers
[4] and seamen of the Alina and D. Godfroy, who, being in a very destitute condition, applied to this consulate for assistance:

From the Alina—Everett Staples, master; J. F. Peterson, first officer; M. H. Staples, second officer; G. A. Stinson, seaman.

From the D. Godfroy—Samuel W. Hallett, master; R. L. Taylor, first officer; Charles F. Brown, second officer; Joseph James, seaman.

I offered assistance to the officers simply as seamen, in accordance with section 211 of my instructions.

As this dispatch will be retained until the sailing of the English packet on the 9th of December, it will be supplemented by any further information which I may obtain in regard to the movements of the Shenandoah.

I have, &c.,
(Signed) JAMES MONROE.

P. S.—*December* 8.—I have no further information in regard to the Shenandoah.
J. M.

[Inclosure 2 in No. 1.]

Statement of American vessels sold to British subjects, from 1858 to 1864, inclusive.

Year.	United States official report.		British official report.	
	Number of vessels.	Tonnage.	Number of vessels.	Tonnage.
Before the war.				
1858	33	12,684	.....	.....
1859	49	21,308	.....	.....
1860	41	13,683	Not given.	11,716
Total	123	47,675	.....	11,716
During the war.				
1861	126	71,673	Not given.	66,757
1862	135	64,578	Not given.	59,103
1863	348	252,379	608	328,665
1864	106	92,052	.....	.....
Total	715	480,682	608	454,525

No. 2.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *May* 4, 1865.

SIR: I have had the honor to receive your note of the 7th of April, forwarding a copy of a letter addressed by the consul of the United States at Rio de Janeiro to his Government, upon the proceedings of a vessel called the Sea King, or Shenandoah, which vessel you state has since been heard of at Melbourne, whence details have been received of outrages committed by her on the commerce of the United States. You then proceed to say, "Were there any reasons to believe that the operations carried on in the ports of Her Majesty's kingdom and its dependencies to maintain and extend this systematic depredation upon the commerce of a friendly people had been materially relaxed or prevented," you would not have had to announce to me "the fact that your Government cannot avoid entailing upon the government of Great Britain the responsibility for this damage."

A British steamer, the City of Richmond, is next alluded to as having been allowed to take supplies from the port of London, and to place them on board a French-built steam-ram, known as the Stonewall, and you found, upon the circumstances to which you have thus alluded, a charge against Great Britain, of not only not checking improper depredations on United States commerce, but of aiming at the destruction of the whole mercantile navigation belonging to the people of the United
[5] States; and while giving credit to Her Majesty's government *for endeavoring to check illicit proceedings of British subjects, you allege that the measures adopted in this respect by Her Majesty's government have never proved effective, and that the evil of which you complain has its origin in the fact that Her Majesty's government recognized the persons in arms against the United States as belligerents, and thereby improperly gave them a status which has led to a long continuance of hostilities; but as the ports held by them have fallen into the

power of the United States, the President looked with confidence to a removal by Her Majesty's government of this ground of complaint.

You conclude by expressing a hope that the ships of war of the United States will be welcomed in British waters in the same friendly manner as has been heretofore customary.

Allow me to observe, in the first place, that I can never admit that the duties of Great Britain toward the United States are to be measured by the losses which the trade and commerce of the United States may have sustained. The question is not what losses the United States have sustained by the war, but whether in difficult and extraordinary circumstances the government of Her Majesty have performed faithfully and honestly the duties which international law and their own municipal law imposed upon them.

Let me remind you that when the civil war in America broke out so suddenly, so violently, and so extensively, that event, in the preparation of which Great Britain had no share, caused nothing but detriment and injury to Her Majesty's subjects. Great Britain had previously carried on a large commerce with the Southern States of the Union, and had procured there the staple which furnished materials for the industry of millions of her people.

Had there been no war, the existing treaties with the United States would have secured the continuance of a commerce mutually advantageous and desirable. But what was the first act of the President of the United States? He proclaimed, on the 19th of April, 1861, the blockade of the ports of seven States of the Union. But he could lawfully interrupt the trade of neutrals with the Southern States upon one ground only, namely, that the Southern States were carrying on war against the Government of the United States; in other words, that they were belligerents.

Her Majesty's government, on hearing of these events, had only two courses to pursue, namely, that of acknowledging the blockade, and proclaiming the neutrality of Her Majesty, or that of refusing to acknowledge the blockade, and insisting upon the rights of Her Majesty's subjects to trade with the ports of the South.

Her Majesty's government pursued the former course as at once the most just and the most friendly to the United States.

It is obvious, indeed, that the course of treating the vessels of the Southern States as piratical vessels, and their crews as pirates, would have been to renounce the character of neutrals, and to take part in the war. Nay, it would have been doing more than the United States themselves, who have never treated the prisoners they have made, either by land or sea, as rebels and pirates, but as prisoners of war, to be detained until regularly exchanged.

So much as to the step which you say your Government can never regard "as otherwise than precipitate" of acknowledging the Southern States as belligerents.

It was, on the contrary, your own Government which, in assuming the belligerent right of blockade, recognized the Southern States as belligerents. Had they not been belligerents, the armed ships of the United States would have had no right to stop a single British ship upon the high seas.

The next complaint (often repeated, I must admit) is, that vessels built in British ports, and afterwards equipped with an armament sent from the British coast, have injured, and, according to your account, almost destroyed, the mercantile marine of the United States.

Now, the only question that can be put on this subject is, whether

Great Britain has performed faithfully the duties incumbent upon her I must here ask you to recollect that our foreign-enlistment act, as well as your foreign-enlistment act, requires proof that the vessel has been or is about to be equipped or armed within our dominions for the purpose of assisting a state or a body of men making war on a state in amity with Her Majesty. In the case of the Alabama, which is always referred to as affording the strongest ground of complaint against Her Majesty's government, the papers affording evidence of a design to equip the ship for the confederate service were furnished to me by you
[6] on the 22d, and more *completely on the 24th of July, 1862. They were reported upon by the law-officers on the 29th of that month. But on that very morning the Alabama was taken to sea on the false pretense of a trial ship.

I contend that in that case, as in all others, Her Majesty's government faithfully performed their obligations as neutrals. It must be recollected that the foreign-enlistment act, though passed in the year 1819, had never been actually put in force, and that it is still doubtful whether the evidence furnished by you on the 22d and 24th of July, though it was deemed a sufficient ground for detaining the Alabama, would have been found sufficient to procure a conviction from a jury, or even a charge in favor of condemnation of the vessel from a judge. Again, I repeat, the whole question resolves itself into this, whether the British government faithfully and conscientiously performed their duties as neutrals, or whether they, from any motives whatever, were guilty of a grave neglect of those duties.

Upon this point it might be sufficient for me to appeal to the unprejudiced judgment formed and expressed at the time by Mr. Seward, after every material fact had been communicated to him by your dispatches of the 25th and 31st of July and the 1st of August, 1862.[1] Writing to yourself on the 13th of August, 1863, he expressed the President's approval of the action which you had taken with respect to the Oreto and the Alabama, (then called No. 290,) and added, "You will on proper occasion make known to Earl Russell the satisfaction which the President has derived from the just and friendly proceedings and language of the British government in regard to these subjects."

In maintaining this view of our duties, I have the satisfaction of thinking that Her Majesty's government are supported by some of the highest authorities of the United States. In 1815 a correspondence began between the ministers representing Spain and Portugal and the United States Government respecting the practice of fitting out privateers in the ports of the United States, and putting them under a foreign flag, and cruising against Spanish commerce. In January, 1817, Señor Onis, Spanish minister at Washington, says:

> It is notorious that although the speculative system of fitting out privateers and putting them under a foreign flag, one disavowed by all nations, for the purpose of destroying the Spanish commerce, has been more or less pursued in all the ports of the Union, it is more especially to those of New Orleans and Baltimore where the greatest violations of the respect due to a friendly nation, and, if I may say so, of that due to themselves, have been committed; whole squadrons of pirates having been out from thence in violation of the solemn treaty existing between the two nations, and bringing back to them the fruits of their piracies, without being yet checked in these courses, either by the reclamations I have made, those of His Majesty's consuls, or the decisive and judicious orders issued by the President for that purpose.

It does not appear that any compensation was ever made for any of these seizures.

But the remonstrances of Portugal are still more applicable.

[1] Papers presented to Congress, December, 1862, Nos. 196, 199, 201, and 323.

On the 8th of March, 1818, Senhor T. Correa de Serra brought to the knowledge of the United States Government the case of three Portuguese ships which had been captured by privateers fitted out in the United States, manned by American crews, and commanded by American captains, though under insurgent colors, and he demanded satisfaction and indemnification for the injury which had been done to Portuguese subjects, as well as to the insult which had been offered to the Portuguese flag. To this letter the American Secretary of State, after reciting the complaint of the Portuguese minister, replies as follows:

The Government of the United States having used all the means in its power to prevent the fitting out and arming of vessels in their ports to cruise against any nation with whom they are at peace, and having faithfully carried into execution the laws enacted to preserve inviolate the neutral and pacific obligations of this Union, cannot consider itself bound to indemnify individual foreigners for losses by capture over which the United States have neither control nor jurisdiction. For such events no nation can in principle, nor does in practice, hold itself responsible.

The Secretary of State, who signed this dispatch, bore a name most honorably known in the annals of the United States, the name of Adams.

The remaining events to be noticed in the history of the answer given by the United States to the complaints of Portugal during the
[7] wars of South America, and *by Great Britain to the United States in the present war, may be recorded without any fear of comparison on the part of the government of Her Majesty.

On the 20th April, 1818, the amended act known as the "American foreign-enlistment act" was passed.

On the 24th of November of that year, the Portuguese minister being asked by Mr. Adams to "furnish a list of the names of the persons chargeable with a violation of the laws of the United States, in fitting out and arming a vessel within the United States for the purpose of cruising against the subjects of his sovereign, and of the witnesses by whose testimony the charge could be substantiated," replied to the following effect:

He had found, with sorrow, multiplied proofs that many of the armed ships which had committed depredations on the property of Portuguese subjects were owned by citizens of the United States, had been fitted in ports of the Union, and had entered, in several ports of the Union, captured ships and cargoes by unlawful means. Many of these citizens of the United States had the misfortune of believing that they did a meritorious action in supporting foreign insurrections, and offered great difficulties in the way of every prosecution instituted by a foreign minister. Prosecutions were ordered by the Government of the United States, but did not appear to have had much effect in checking the depredations complained of.

In March, 1819, the Portuguese minister alleges that in contrast to the Spanish insurgents who had ports and a long line of coast at their disposal, Artigas, the chief whose flag was borne by United States privateers, was wandering with his followers in the inland mountains of Corrientes. The "Artigan flag," he continues, "which has not a foot length of sea-shore in South America where it can show itself, is freely and frequently waving in the port of Baltimore; Artigan cockades were frequently met with in that city in the hats of American citizens unworthy of that name."

In another note dated the 23d of November, 1819, the Portuguese minister says. "I do justice to and am grateful for the proceedings of the Executive in order to put a stop to these depredations, but the evil

is rather increasing. I can present to you, if required, a list of fifty Portuguese ships, almost all richly laden, some of them East Indiamen, which have been taken by these people during the period of full peace. This is not the whole loss we have sustained, this list comprehending only those captures of which I have received official complaints. The victims have been many more, besides violations of territory by landing and plundering ashore with shocking circumstances.

"One city alone on this coast," he says, "has armed twenty-six ships which prey on our vitals, and a week ago three armed ships of this nature were in that port waiting for a favorable occasion of sailing on a cruise."

In July, 1820, the Portuguese minister proposed that the United States should appoint commissioners to confer and agree with commissioners of the Queen of Portugal in what reason and justice might demand.

But Mr. Adams again says that for wrongs committed in the United States territory, Portuguese subjects have a remedy in the courts of justice, but "for any acts of the citizens of the United States committed out of their jurisdiction and beyond their control, the Government of the United States is not responsible."

To this most just principle, which was again referred to by Mr. Secretary Clayton, and maintained against the government of Portugal to this hour, the United States must be held still to adhere. No matter how many rich Portuguese ships were taken; no matter even what flag was borne by the vessels which took them, for these acts of the citizens of the United States acting as the captains, officers, and crews of those cruisers, the United States Government declared itself not responsible. Nor was that Government induced to depart from that ground by the urgent representations of the Portuguese minister in his letter to Mr. Webster of the 7th of November, 1850, that "by due diligence on the part of the Government and the officers of the United States, the evil might have been prevented," and that "the fitting out of these vessels was not checked by all the means in the power of the Government, but that there was a neglect of the necessary means of suppressing these expeditions." With regard to Spain the case was somewhat different, as the United States had many outstanding claims against the government of Spain; and, on the other hand, the claims of Spain were rested upon the interpretation placed by her on her treaty with the United States. The claims of the United States were used as a set-off against the claims of Spain, on account of the depredations committed by the United States cruisers commanded by United States captains,

[8] *and in respect of other matters; and both orders of claims were renounced and abandoned by a treaty between Spain and the United States, concluded on the 22d of February, 1819.

Before I refer to the conduct of Great Britain during the present civil war, I must for a moment allude to an address of President Monroe in regard to the South American insurrections: "The revolutionary movement in the Spanish provinces in this hemisphere attracted the attention and excited the sympathy of our fellow-citizens from its commencement." Such is the statement of President Monroe in his special message of the 8th of March, 1822. It must be acknowledged that in this country the gallantry of the people of the Southern States, in their endeavors to give those States an independent position in the world, excited a large amount of sympathy. It must be acknowledged also that the desire of large profits from the sale of cargoes induced many of the Queen's subjects to engage in blockade-running. But, on the other hand, it must be said that no British subject appears to have com-

manded a confederate cruiser, while United States citizens seem frequently to have acted as captains of the privateers which, under the flag of Buenos Ayres, or some other South American state, committed depredations on Spanish and Portuguese commerce. Nor was the vigilance of Her Majesty's government at fault when, as in the case of the steam-rams built at Birkenhead for a confederate agent, they were fully convinced that vessels of war were being constructed for purposes hostile to the United States. Indeed, so decided and so effective was the action of the government in detaining the vessels called the El Tousson and El Monassir, that it appears by the published parliamentary reports that a member of Parliament charged the government with having done, and with having done on their own confession, what was illegal and unconstitutional, without law, without justification, and without excuse. Unfounded as that charge was, yet, coming as it appears from high authority, it is obvious that nothing but the intimate conviction that those vessels were intended for confederate vessels of war, that unless detained they would attempt to break the blockade of the United States squadrons, and that such an act might have produced the gravest complications, could have sustained the government under the weight of charges thus urged.

Let us compare this case, in which Her Majesty's government detained and seized the ships, with that of the Shenandoah to which you refer, in which they did not interfere.

The Shenandoah was formerly the Sea King, a merchant or passage steamship belonging to a mercantile company. She was sold to a merchant, and soon afterward cleared for China as a merchant-ship; not a tittle of evidence was ever brought before Her Majesty's government by you or any one else to show that she was intended for the service of the confederates. Had it been alleged even that her decks were stronger than usual, apparently for the purpose of carrying guns, it might have been plausibly answered that the China seas abounded with pirates, and that guns were necessary in order to drive them off.

But it is said that guns and men were sent to meet a confederate vessel at sea. So far as guns are concerned, this is not an offense against our laws; nor am I aware of any authority of international law according to which the British government could be bound to prevent it. So far as men are concerned they could not be interfered with, without evidence of an intention or engagement to serve as confederate seamen, and no such evidence was ever offered to Her Majesty's government. What if these guns and men were sent in a vessel which cleared for Bombay? Would it have been right for Her Majesty's government without evidence to seize such a vessel? Would not proceedings thus unauthorized by law or by any legal grounds of suspicion have been loudly and universally condemned? It is true that arms were sent out to the Olinde, a French vessel, and that the Sea King, having changed its character at sea, appeared afterward as a confederate ship of war. But in the words of Mr. Adams in 1818, "For such events no nation can in principle, nor does in practice, hold itself responsible." With regard to the export of arms sent by individuals in this country to vessels on the high seas, it must not be forgotten that the Government and courts of the United States have always upheld the legality of this traffic. On the subject of certain memorials of British subjects sent to the Secretary of State of the United States during the revolutionary war, Mr. Jefferson says, "We have answered that our citizens have always been free to make, send, or export arms: that it is the constant occupation and livelihood of some of them. To suppress their callings, the only means perhaps of their subsistence,

because a war exists in foreign and distant countries with which
[9] we *have no concern, would hardly be expected. It would be hard in principle, and impossible in practice."

This, be it recollected, was not the opinion of Mr. Jefferson alone; he wrote by the direction of General, then President, Washington.

With respect to the alleged destruction of the mercantile navigation of the United States, it must be noted that it has been common to transfer American merchant-ships, without change of cargo or of crew, nominally to British owners in order to avoid the higher rates of insurance payable during war. With peace the mercantile marine of the United States will, I have no doubt, be at least as numerous as before.

I am happy to see that you declare yourself by no means insensible to the efforts which Her Majesty's Government have made, and are still making, to put a stop to such outrages on this kingdom and its dependencies, and that you cannot permit yourself to doubt the favorable disposition of the Queen's ministers to maintain amicable relations with the Government of the United States; nay, further, you state that the avoidance of the gravest of complications "has been owing in the main to a full conviction that Her Majesty's government has never been animated by any aggressive disposition toward the United States, but, on the contrary, that it has steadily endeavored to discountenance, and in a measure to check, the injurious and malevolent operations of many of her subjects." The question then really comes to this: Is Her Majesty's government to assume or be liable to a responsibility for conduct which Her Majesty's Government did all in their power to prevent and to punish? A responsibility which Mr. Adams on the part of the United States Government in the case of Portugal positively, firmly, and justly declined.

Have you considered to what this responsibility would amount?

Great Britain would become thereby answerable for every ship that may have left a British port and have been found afterward used by the confederates as a ship of war; nay, more, for every cannon and every musket used by the confederates on board any ship of war if manufactured in a British workshop.

I now come to that part of your letter which relates to the future.

The late successes of the United States armies give us every reason to hope for a speedy termination of the war. In such case the restrictions which have been imposed upon the vessels of the United States as belligerents will of course cease. In such case also it is to be presumed the cruisers and privateers of the confederates will be at once sold and converted into merchant-vessels. But the present state of affairs does not allow me to speak with certainty upon this point.

The questions remain, however, first, whether the United States vessels of war will be now allowed to come into the harbors of Her Majesty's dominions without other restrictions than those usual in times of peace; and another question closely connected with it, namely, whether the confederates are still to be treated as belligerents.

My answers are the following:

In regard to the first question, Her Majesty's government are quite willing that vessels of war of the United States shall be treated in the ports of Her Majesty in the same manner as Her Majesty's vessels of war are treated in the ports of the United States, with this single exception, that if an enemy's vessel of war should come into the same port, the vessel which shall first leave the port shall not be pursued by its enemy until twenty-four hours shall have elapsed.

Before answering the second question, I wish to know whether the

United States are prepared to put an end to the belligerent rights of search and capture of British vessels on the high seas? Upon the answer to this question depends the course which Her Majesty's Government will pursue.

All that I can do further is to assure you that Her Majesty's Government, who have lamented so sincerely the continuance of this painful and destructive contest, will hail with the utmost pleasure its termination, and will view with joy the restoration of peace and prosperity in a country whose well-being and happiness must always be a source of satisfaction to the sovereign and people of these realms.

I am, &c.,
(Signed) RUSSELL.

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[10] *No. 3.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, May 20, 1865. (Received May 21.)

MY LORD: I have had the honor to receive your note of the 4th instant, in reply to mine of the 7th of last month. I have already taken the earliest opportunity to transmit a copy to my Government. If it should not so happen that the course of events dispose of the matter beforehand, I shall probably receive instructions which will enable me to give the information which your lordship appears to desire.

Pending the receipt of these, however, I must ask pardon for observing that in the notice which you have been pleased to take of the arguments submitted in my note, you have so far extended the field of discussion as to make it my duty to proceed in it still further.

And here I would beg leave to remark that if I am to judge of the general statement made of my position by the abstract of it presented to me by your lordship, I must have very grievously failed in offering the logical sequence of my propositions as distinctly as I had desired to do. This will render necessary another effort to place them before you in the following brief recapitulation:

It was my wish to maintain—

1. That the act of recognition by Her Majesty's Government of insurgents as belligerents on the high seas before they had a single vessel afloat was precipitate and unprecedented.

2. That it had the effect of creating these parties belligerents after the recognition, instead of merely acknowledging an existing fact.

3. That this creation has been since effected exclusively from the ports of Her Majesty's kingdom and its dependencies, with the aid and co-operation of Her Majesty's subjects.

4. That during the whole course of the struggle in America, of nearly four years in duration, there has been no appearance of the insurgents as a belligerent on the ocean, excepting in the shape of British vessels, constructed, equipped, supplied, manned, and armed in British ports.

5. That during the same period it has been the constant and persistent endeavor of my Government to remonstrate in every possible form against this abuse of the neutrality of this kingdom, and to call upon Her Majesty's government to exercise the necessary powers to put an effective stop to it.

6. That, although the desire of Her Majesty's ministers to exert themselves in the suppression of these abuses is freely acknowledged, the efforts which they made proved in a great degree powerless, from the inefficiency of the law on which they relied, and from their absolute refusal when solicited, to procure additional powers to attain the object.

7. That by reason of the failure to check this flagrant abuse of neutrality the issue from British ports of a number of British vessels, with the aid of the recognition of their belligerent character in all the ports of Her Majesty's dependencies around the globe, has resulted in the burning and destroying on the ocean a large number of merchant-vessels and a very large amount of property belonging to the people of the United States.

8. That in addition to this direct injury, the action of these British-built, manned, and armed vessels has had the indirect effect of driving from the sea a large portion of the commercial marine of the United States, and to a corresponding extent enlarging that of Great Britain, thus enabling one portion of the British people to derive an unjust advantage from the wrong committed on a friendly nation by another portion.

9. That the injuries thus received by a country which has meanwhile sedulously endeavored to perform all its obligations, owing to the imperfection of the legal means at hand to prevent them, as well as the unwillingness to seek for more stringent powers, are of so grave a nature as in reason and justice to constitute a valid claim for reparation and indemnification.

In making this recapitulation it is no part of my design to go over any of the reasoning which has already been exhausted in the correspondence which I have had the honor heretofore to hold with your lordship. I shall endeavor to confine myself to such points as may have been raised by the new matter embodied in the note to which I now have the honor to reply.

With regard to my first proposition, I have ventured to affirm
[11] that the *recognition of the insurgents as belligerents on the 13th of May was precipitate and unprecedented. That it was precipitate is clear from the fact that not a single vessel entitled to the character was at that moment afloat on the ocean, and that even on the land the war itself had barely commenced in the bloodless capture of Fort Sumter. That it was unprecedented, I must infer that your lordship does not design to dispute, since it appears that you have not availed yourself of my invitation to furnish me with any examples.

Nevertheless, I have endeavored, so far as I was able myself, to investigate the matter in order that I might be fully satisfied in regard to the solidity of the reasons which your lordship has done me the favor to offer for so suddenly taking this step. I have found in history an abundance of instances of insurrection, either temporarily or ultimately successful; in most of them there was much more of necessity pressing upon neutral powers for deciding the points to which your lordship has referred in your note; but I have failed to discover a single occasion upon which any of the powers made a decision in anticipation of a case of immediate necessity presenting itself to their attention.

In this connection I may, perhaps, be pardoned for reminding your lordship of the circumstances connected with the breaking out of the Revolution in the British colonies in America. It could not, then, be said that cruisers and merchant-vessels did not at once swarm on the ocean. Neither was the other contingency absent, of the decision of

Her Majesty's government to close some ports and to blockade others. Yet I do not perceive that France, however well inclined to do so, did actually take a single step to declare, by proclamation, these insurgents as belligerents at any time. The course which it did take, the same which I find to have been usual, was to await the arrival of an insurgent vessel in her ports. When that event did happen, a decision was made. It was received as belonging to a belligerent. The same course was likewise taken in Holland. But I must beg leave to remind your lordship that even this quiet proceeding was instantly denounced by His Majesty's government in both cases as a wrong demanding reparation, and was made one of several grounds for which, in the end, Great Britain made war successively against each nation.

But the immediate recognition of the insurgents by a proclamation was not the only unprecedented proceeding resorted to by Her Majesty's government to create a status which had no actual existence. In advance of that step it now appears that measures were taken and overtures made to effect a species of diplomatic negotiation with the so-called authorities at Richmond, for the purpose of gaining their adhesion to the four points of the celebrated treaty of 1856. Considering that the party applied to had not then, and has not at any moment since ever been able to boast of sailing a single vessel of its own construction, equipment, and manning, this might very naturally have been construed by it as equivalent to offering to create for it a status in the ports of the proposing party, applying in advance of any idea of profiting by such a privilege. I do not intend to affirm that Her Majesty's government, in taking this extraordinary step, had any design to hold forth an invitation. On the contrary, I disclaim any such idea. But it must be obvious to your lordship that some responsibility is often incurred for the injurious consequences naturally flowing from human action, even though there may not be the presence of evil intention. From the evidence already before the public it does not admit of a doubt that these proceedings, taken together, did have the effect of encouraging the insurgents to a degree which led to the prosecution of their subsequent audacious policy.

The insurgents ultimately became a belligerent on the ocean solely by reason of the facilities furnished them in Her Majesty's ports. The fact appears to me to be indisputable. For down to the close of the war, with the exception mentioned in my former note, of two passenger steamers stolen from the citizens of New York, not a single effective vessel of theirs has been seen on the ocean, excepting the six or seven which have been wholly supplied in and from this kingdom. Of the preparation of these steamers for the purpose indicated, I have endeavored from time to time to furnish your lordship with such evidence as I had it in my power to obtain. For a considerable time I found myself unable to stem the combined effect of the secret sympathy of Her Majesty's officers in the port of Liverpool, and of your lordship's very natural incredulity based on their reports, in procuring more than formal attention to my representations. Thus it was that the gun-boat Oreto got away, and soon after became the armed privateer the Florida All the statements I had the honor to submit proved true to the
[12] *letter, but nevertheless the facility with which the evasion had been accomplished furnished the strongest encouragement to the subsequent great extension of the field of operations.

It was at that moment that a deliberate policy was adopted by the insurgents, under which a base was made in this kingdom for all the extensive warlike operations since conducted by them. The officers

were then established, and all the ramifications of a bureau regularly organized.

The next example was that of the gun-boat No. 290, afterward well known as the cruiser the Alabama. I refer to this case once more only because it has been particularly referred to by your lordship. I do so for the purpose of expressing my dissent from the statement made in your note in regard to certain important particulars. Your lordship is pleased to state that the papers affording evidence of a design to equip this ship for the confederate service were furnished to you on the 22d and on the 24th of July. This is certainly true. But your lordship will be kind enough to remember that my first note, giving information as to the character of that vessel, was dated on the 23d June, that is, one month preceding. On the 4th of July, the commissioners of Her Majesty's customs, to whom that representation was referred, made a report admitting the fact that the vessel was certainly built for a ship of war, but affirming that the evidence presented of her being intended for the so-called confederate government was not sufficient to justify a detention. The concluding sentence in their letter was in these words. I pray permission to ask your lordship's particular attention to them:

> We beg to add that the officers of Liverpool will keep a strict watch upon the vessel, and that any further information that may be obtained concerning her will be forthwith reported.

Here was a distinct pledge on the part of two of Her Majesty's officers that "they would keep a strict watch on this vessel," which pledge was sent to me with your lordship's note of the 4th of July, requesting me to obtain such further evidence as might tend to show the destination of the vessel. Considering this as a distinct engagement, sanctioned by Her Majesty's government, to keep faithful watch over that vessel so long as it might be necessary to obtain more evidence as to her character, the precise date of the receipt of that evidence becomes a question of secondary importance. The true question appears to be how that pledge was actually redeemed. This will appear clearly enough in the sequel.

On the 9th of July, the consul made a statement to the collector of facts as they had become known to him. He entered into a number of details in respect to the persons engaged in connection with this vessel, naming individuals with a particularity certainly deserving of some investigation by Her Majesty's officers at Liverpool, if they really meant to satisfy themselves that she ought to be detained. But it does not appear that they considered it their duty to initiate or even to carry on any inquiry. The board of customs contented themselves with a formal reply on the 15th instant, denying that there was sufficient *prima facie* evidence to justify a seizure of the vessel.

On the other hand, my lord, I must take the liberty to remark, after a calm re-examination of the substance of that letter, that if there was not *prima facie* evidence enough in it to justify the seizure, there was matter enough in it to make it the bounden duty of Her Majesty's officers to lose no time and omit no effort to obtain the evidence on their own account to verify or to disprove the allegations.

They do not so appear to have read their duty. The consequence was that more time was necessary for me to procure the information which, as officers of the Crown, they admit in their own letter they ought to have procured themselves. I did obtain evidence, though the process naturally consumed time. That evidence was submitted on the 21st of July by the consul at Liverpool to the collector of that port, and by him referred to the board of customs. The deliberate answer of that body

was made on the 23d of July, and it was to the effect that it was not sufficient to justify any steps being taken against the vessel under the law.

Thus far it appears that although Her Majesty's officers had pledged the government to keep faithful watch over the vessel and report any further information they might obtain, no one of them seems to have been disposed to pay the smallest attention to any representations or any evidence offered by myself or any agent of the United States, even so far as to stimulate his own action in any way whatever. A change now took place, to the nature of which I beg most particularly to call your lordship's attention.

[13] On the next day after this decision of the customs board I had the honor of *sending to your lordship copies of six of the very same depositions which had been already sent to them. Whether these would by themselves have met with a better fate I cannot venture to pronounce. But on the 24th I transmitted two additional ones, to which was appended a professional opinion by a British subject, distinguished as a Queen's counsel, which had been given to me after a careful examination of all these papers. It was to the following effect:

1. That if the collector of Liverpool did not detain the vessel he would incur a heavy responsibility, of which the board of customs must take their share.
2. That if the vessel was allowed to escape, it deserved consideration whether the Federal Government would not have serious grounds of remonstrance.

These were ominous words. They laid the responsibility distinctly upon the very parties who had given the original pledge of vigilance and attention. And yet, during the very interval in which Her Majesty's government was deliberating upon their purport, the vessel was permitted to escape. Neither did this event occur without most explicit warning of the danger having been given by a person acting on behalf of the United States. As early as the 23d of July, six days before that escape, Mr. Squarry, the solicitor employed in the case, addressed a note to the secretary of the customs board warning them most distinctly of the fact that the vessel was ready for sea, had fifty men on board, and could sail at any time. On the 26th he wrote another letter, repeating the warning once more; yet, in spite of the promise to keep a strict watch, and in spite of these repeated warnings, the vessel was permitted to steam out of Liverpool just as if no cause of suspicion of her destination had ever been excited. And as if to crown the extraordinary character of the transaction, after receiving from Mr. Squarry notice on the 29th that the vessel was actually gone, it was not until the 31st that telegrams were issued to Liverpool ordering her detention. I must respectfully represent to your lordship that this proceeding, so far from appearing to do any justice to the demand of the United States, looks almost as if it were intended as a positive insult.

It is true that on the same day telegrams ordering a detention were sent to Cork; likewise, on the 1st of August, to Beaumaris and Holyhead: and on the 2d of August a letter was sent to the collector at Cork to the same effect. For all practical purposes, they might have been sent just as well at this moment that I am addressing these lines to your lordship. It further appears that instructions were sent to the governor of the Bahamas in case the vessel should visit Nassau. The vessel did not visit that place; but the next time she visited a port within Her Majesty's dominions was after she had entered upon her career of depredation, and then, instead of being detained, she was politely received and acknowledged as the vessel of a *bona-fide* belligerent.

It now appears that from the day when, by the flagrant negligence of Her Majesty's board of customs, this vessel, admitted to be intended for war purposes, was suffered to depart from the port of Liverpool, down to the hour of her destruction by the United States steamer Kearsarge, off the coast of France, she came again and again into ports within Her Majesty's jurisdiction; and instead of being treated as Her Majesty's goverment directed if she should go to Nassau, she was everywhere hailed with joy and treated with hospitality as a legitimate cruiser.

On behalf of my Government, I respectfully protest against the whole of this proceeding as contrary to recognized principles of international law. What the obligation of Her Majesty's government really was in this instance is so clearly laid down by a distinguished writer, notoriously disposed never to exaggerate the duties nor to undervalue the privileges of neutrals, that I will ask the liberty to lay before you his very words:

Le fait de construire un bâtiment de guerre pour le compte d'un belligérant, ou de l'armer dans les états neutres, est une violation du territoire. Toutes les prises faites par un bâtiment de cette nature sont illégitimes, en quelque lieu qu'elles aient été faites. Le souverain offensé a le droit de s'en emparer, même de force, si elles sont amenées dans ses ports, et d'en réclamer la restitution, lorsqu'ells sont, comme cela arrive en général, conduites dans les ports hors de sa juridiction. It peut également réclamer le désarmement du bâtiment illégalement armé sur son territoire, et même le détenir, s'il entre dans quelque lieu soumis à sa souveraineté, jusqu'à ce qu'il ait été désarmé.

It is, then, with undoubted confidence in the justice of the reasoning here presented that I take the liberty to re-affirm the validity of the claims of my government for all the damage done by this vessel during her career, and ask reparation therefor.

[14] *With respect to the extract from the letter of Mr. Seward to me of the 13th August, 1863, (actually written in 1862,) by a clerical error in your lordship's note that for a time misled me, which you are pleased to quote as a proof that he was perfectly satisfied with the proceedings, I can only remark that the very date itself sufficiently proves that his language never could have been intended to apply to the extent to which your lordship appears to suppose, for at that moment he had been but very partially put in possession of all the facts connected with the case. His remark obviously pointed only to the disposition of your lordship, which has never been brought into question. What he has thought of the whole case since, and what instructions have been given to me in consequence, are matters too well known to your lordship to render further explanation necessary.

Passing from this point to the more general question between the two countries, I proceed to the task of considering an argument of your lordship of a widely different description; this is one drawn entirely from the authority supplied by the previous practice of the Government which I have the honor to represent. You cite this as an example to sustain the position taken by Her Majesty's government against the present claim. It is urged that, in at least two instances cited, where similar claims were presented by the representatives of foreign powers to the United States, they were replied to with substantially the same reasoning now repeated by Her Majesty's government. These are the cases of Spain and Portugal, the commerce of which countries had suffered from depredation on the ocean committed by vessels built, armed, manned, and equipped by citizens of the United States and dispatched from their ports.

The first remark that I would pray permission to submit in connection with this view of the subject is this. That even if it were true that the

Government of the United States had, half a century since, refused to recognize the just claims of other powers for damage done, by reason of their omission to prevent the abuse of their neutral ports to the commerce of those powers, it could in no degree change the nature of any subsequent omission or neglect committed by other powers at this day. It is a principle of morals too thoroughly known to your lordship to require my dwelling upon it for a moment, that the wrong doing of one party cannot be cited in justification of a repetition of the act by another. Surely if the United States Government had ventured upon declaring what was once known as a paper blockade of the whole southern coast, Her Majesty's government would not have been content to be told that such was the acknowledged practice of Great Britain many years ago. Neither would it have been better satisfied if the United States had resorted to the press-gangs in the outset of the war to fill their ships with British subjects forced against their will to fight their own countrymen in the Alabamas, and Floridas, and Shenandoahs, and Tallahasses depredating on the ocean, to be told in answer to their remonstrances that just such was the treatment Americans experienced at the hands of Great Britain prior to the war of 1812.

But conclusive as this reasoning may be held to be to annul at once all the authority that springs from mere precedent as its source, I am by no means disposed to resort to it in the cases cited by your lordship. They are very familiar to me, and to my view are in themselves so far from furnishing strength to the positions which have been taken by your lordship, that they bear directly the contrary way. The parallel attempted to be drawn is, in other words, wholly defective and inapplicable.

In regard to the injuries inflicted by citizens of the United States upon the commerce of Spain, the extract which your lordship is pleased to quote from the official note of the representative of the latter country, Don Luis de Onis, certainly does show that such were actually committed. I am not aware that the Government of the United States ever denied the fact. The expedition fitted out by General Miranda against a certain portion of the coast of South America then under Spanish rule, was unquestionably a violation of the neutrality of the country, which ought to have been prevented. All these cases constituted claims which the Spanish government held against the United States, very much in the same way that the claims for damage done by the Alabama, &c., issued from British ports, are now held by the United States. On the other hand, however, it should be observed that out of the wars of Europe there had grown up a much larger amount of claims on behalf of the people of the United States for the injuries done to their commerce by illegal seizure and condemnation of their vessels in the ports of Spain. In progress of time, the necessity became urgent on
[15] both sides to enter *into a deliberate examination of the merits of these respective claims, and, if possible, to arrive at fair terms of settlement. A plan of a treaty was proposed, embracing all that was regarded as fairly to be brought forward on the two sides. It was during this process that Don Luis de Onis, the very same person whom your lordship has been pleased to cite as making the complaint, himself, on the 24th of October, 1818, presented a project of six articles, intended to include every one of those objects.

There can be no doubt that this proposal was intended to cover the very claim which was presented in the previous note of January, 1817, an extract from which your lordship has done me the honor to quote. If your lordship should have any inclination to draw it into question, I

shall only have to refer you to a second project presented by the same individual on the 16th of November, 1818, in which occur these words:

My fourth proposal to your government has for its object the renunciation by both governments and nations of all claims for spoliations respectively suffered by either of the two powers or their subjects, until the signing of the treaty.

And as a voucher for what was meant, there is attached to this paper a document containing three separate lists—one, of the names of the Spanish vessels taken; another, of the privateers fitted out in the American ports, by which they were taken; and a third, of the property taken in those vessels. In other words, these constitute the very claims for injuries complained of in the note of M. Onis, to which your lordship has been pleased to refer.

To this proposition, so presented by M. Onis, the Government of the United States raised no objection. It was, therefore, so far as it went, admitted as an item *pro tanto* on the side of Spain in the settlement of the opposite questions between the two nations. As such, it was incorporated into the project of a treaty drawn up by Don Luis de Onis for the consideration of the United States Government, and delivered on the 9th of February, 1819. In this paper it makes a portion of the tenth article. The renunciation of His Majesty was made to extend to all injuries caused by the expedition of Miranda, fitted out and equipped at New York, and "to all claims of subjects of His Catholic Majesty upon the Government of the United States, in which the interposition of His Catholic Majesty's government has been solicited before the date of this treaty, and since the date of the convention of 1802, or which may have been made to the department of foreign affairs of His Majesty, or to his minister in the United States."

It is not to be supposed for a moment that in making this voluntary offer, the Spanish government did not expect to gain for it a just equivalent in settling the other and less favorable terms of the treaty.

This offer, so made, was accepted by Mr. Adams for the United States, and incorporated in his counter project, offered to Don Luis de Onis on the 13th of February, 1819.

It therefore now stands *totidem verbis* as a part of the treaty signed by the representatives of the two countries on the 22d of February of that year.

All the papers from which these extracts are taken have been long before the world. I trust I may therefore be pardoned if I express no small astonishment that your lordship should have fallen into the error of affirming in the note which I have had the honor to receive, that "it does not appear that any compensation was ever made for any of these seizures."

I now ask leave to proceed to the consideration of the other case referred to in your lordship's note—the claim of Portugal upon the United States for similar injuries to those complained of on behalf of Spain. I am the more disposed to approach the subject, that, unlike the other case, it is new in the correspondence which it has been my duty to hold with your lordship, and that it gives me an opportunity to correct some misapprehensions which appear to exist as to its true character and bearing on the present discussion.

The extracts from various public papers of the Government of the United States with which your lordship has favored me, sufficiently establish the fact as stated, to wit:

That the revolutionary movement in South America excited the sympathy of the people of the United States.

Your lordship is pleased here to apply the parallel so far as to admit

that in this kingdom there was similar sympathy with "the people of the Southern States" in what you describe as "their endeavors to give these States an independent position in the world." This was an
[16] unfortunate illusion as to the true objects *of that struggle of which I have been aware, but which I have never ceased to regret.

Yet I would respectfully call the attention of your lordship to the circumstance, in connection with this supposed parallel, that notwithstanding the sympathy of the people of the United States with South America, and notwithstanding that the insurgents did possess both open ports and abundant facilities for cruising on the ocean, the Government of the United States did not herald their movement by a prompt declaration recognizing these people as a belligerent power as against Spain.

So far was this from being true, that no sooner was it known that movements were set on foot to make a few of the ports of the United States a base for the operations of the insurgents, aided by citizens of the country, than orders were given to the proper officers of the government to apply the whole power of the existing laws to prevent it. In proof of this assertion, I pray permission to submit the reports of the prosecuting attorneys for the two districts in which the offenses were most committed. Copies of these papers will be found appended to this note. They will show that seven different individuals, citizens of Spanish America, engaged in these operations against the neutrality of the country, were subjected to trial for their offenses in the courts. I would here beg leave to interpose the remark that, so far as I know, in spite of all the evidence which I have presented to your lordship as to the complicity of leading insurgents of the United States residing in this kingdom in the violations of neutrality here committed, not a single prosecution has ever been attempted by Her Majesty's government. They will also show that the only limit to the effort of the government to punish the parties concerned was the inefficacy of the provisions of the existing law passed in 1794. It was this difficulty which soon forced itself upon the attention of the President.

It is here that I beg leave to take up the case of Portugal, and to ask attention to those particular points in which the action of the United States in this case differs most materially from that of Her Majesty's government, with which it has been attempted to make a parallel.

On the 20th of December M. J. Correa de Serra, the diplomatic representative of Portugal at Washington, addressed a note to Mr. Monroe, then the Secretary of State, presenting the particulars of a strong case of violation of the law which had just happened in Baltimore. He proceeded frankly to acquit the Government of any want of disposition to punish the offense, and to mention the obstacle, which he designated to be an imperfection of the statute law.

I pray your lordship's permission to cite the passage which explains the nature of the request he made in consequence:

I apply, therefore, to this Government in the present instance not to raise altercations or to require satisfaction, which the Constitution of the United States has not, perhaps, enabled them to give, because I know that the supreme Executive of this nation, all-powerful when supported by law, is constitutionally inactive when unsupported by it. What I solicit of him is the proposition to Congress of such provisions by law as will prevent such attempts for the future. I am persuaded that my magnanimous sovereign will receive a more dignified satisfaction, and worthier of his high character, by the enactment of such laws by the United States which, insuring the respect due to his flag for the future, would show their regard for His Majesty, than in the punishment of a few obscure offenders (even if attainable) who, disowned as they are by the United States, may, no doubt, if they take any unwarrantable liberty with

the property of His Majesty's subjects, meet the fate every honest mind wishes to them, and serve as examples and warning to those who in future may feel piratical dispositions. I rely on the President's wisdom, and the wish I am sure he must feel of putting an end to these shameful practices, that he will take the proper measures to have my just requisition fulfilled.

This was on the 20th December. Only six days elapsed after the reception of this application, when Mr. Madison, then the President, addressed a message to both Houses of Congress in the following words:

It is found that the existing laws have not the efficacy necessary to prevent the violations of the obligations of the United States as a nation at peace toward belligerent parties, and other unlawful acts on the high seas by armed vessels equipped within the waters of the United States.

With a view to maintain more effectually the respect due to the laws, to the
[17] character, and to the neutral and pacific relations of the United States, I recom-
*mend to the consideration of Congress the expediency of such further legislative provisions as may be requisite for detaining vessels actually equipped, or in course of equipment, with a warlike force, within the jurisdiction of the United States; or, as the case may be, for obtaining from the owners or commanders of such vessels adequate securities against the abuse of their armaments, with the exceptions in such provisions proper for the cases of merchant-vessels furnished with the defensive armaments usual on distant and dangerous expeditions, and of a private commerce in military stores permitted by our laws, and which the law of nations does not require the United States to prohibit.

The precise points which he desired to have incorporated into a statute are specified in a note from the Secretary of State to Mr. Forsyth, chairman of Committee on Foreign Relations. They are these:

Having communicated to you verbally the information asked for by your letter of the 1st instant, except so far as it relates to the last inquiry it contains, I have now the honor to state that the provisions necessary to make the laws effectual against fitting out armed vessels in our ports for the purpose of hostile cruising seem to be:

1. That they should be laid under bond not to violate the treaties of the United States, or the obligations of the United States under the law of nations, in all cases where there is reason to suspect such a purpose on foot, including the cases of vessels taking on board arms and munitions of war, applicable to the equipment and armament of such vessels, subsequent to their departure.

2. To invest the collectors, or other revenue officers where there are no collectors, with power to seize and detain vessels under circumstances indicating strong presumption of an intended breach of the law; the detention to take place until the order of the Executive, on a full representation of the facts had thereupon, can be obtained. The statute-book contains analogous powers to this above suggested. (see particularly the eleventh section of the act of Congress of April 25, 1808.)

The existing laws do not go to this extent. They do not authorize the demand of security in any shape, or any interposition on the part of the magistracy as a preventive, where there is reason to suspect an intention to commit the offense. They rest upon the general footing of punishing the offense merely where, if there be full evidence of the actual perpetration of the crime, the party is handed over, after the trial, to the penalty denounced.

Experience both in America and in this kingdom has united to prove that the measure of restraint here pointed out is almost the only effective one which can be resorted to in such cases. Had it been found possible to use it here, I am confident that a great portion of the difficulties experienced by Her Majesty's government during the late war would have been avoided.

On the 3d of March, 1817, a temporary law was passed to meet the emergency, which was received by the Portuguese minister with the greatest satisfaction.

On the 8th of March, 1818, the Portuguese envoy addressed a representation to the Secretary of State in regard to the capture of three vessels by one of these illegal cruisers. But it should be particularly noted that these cases appear all to have grown out of depredations committed by a single vessel which had escaped from the United States previous to the date of the enactment of the new statute. The captures themselves took place on the ocean at about the time of its passage.

With the aid of this explanation, your lordship will be better able to appreciate the force of the language of Mr. Adams, then the Secretary of State, in his reply to the Portuguese minister, which you have done me the honor to quote in your note. The government had not only literally done all in its power, under existing laws, to prevent these violations of neutrality, but had, at the request of the envoy himself, procured the adoption by Congress of a new and more stringent statute. Surely, under such circumstances, nothing more could reasonably be expected of it.

This seems to have been the opinion of the Portuguese minister himself. So well satisfied was he with the practical operation of this law in checking these enterprises, that, at the moment when it was about to expire by its own limitation of two years, on the 4th of February, 1819, he once more came forward to express his anxiety about losing it, and addressed an earnest representation to the United States Government to secure an extension of the term. The reply was to the effect that it had not only been incorporated into a new and improved form, but was made permanent.

[18] *This will appear from the following note of Mr. Adams:

SIR: In answer to your letter of the 4th instant, I have the honor of informing you that the act of Congress of 3d March, 1817, to which it refers, was repealed by the act of the 20th of April last, entitled "An act in addition to the act for the punishment of certain crimes against the United States, and to repeal the acts therein mentioned," being the eighth chapter of the laws of the last session. On referring to this last-mentioned statute, which is not of limited duration, you will find that the provisions of the temporary act of 3d March, 1817, are re-enacted by it.

From all which proceedings it distinctly appears that although there were some violations of neutrality committed in defiance of every precaution both before and afterward, yet the position of the United States in regard to every complaint was an impregnable one. It had done everything in its power, not only to execute existing laws, but to provide more stringent and satisfactory enactments to remedy the defects of the old ones.

Had Her Majesty's government in its wisdom decided to do as much as this in the late war, I am not sure that I should have been able to resist the argument drawn from the example your lordship has cited in its defense. But I regret to be obliged to remind you that, so far was this from being the case, it took diametrically the opposite course. At an early period, my Government, not unaware of the obstacles that were presenting themselves to the effective application of the existing statutes of Great Britain to the offenses notoriously committed within this kingdom, directed me to call your lordship's attention to the expediency of procuring for the government more stringent provisions. I did then venture respectfully to propose to you that some steps should be taken to obtain at least such modifications of the existing enlistment act as might tend to make it a better preventive measure. Your lordship was pleased in the first instance to respond favorably, at least so far as to make the adoption of such amendments conditional upon corresponding and simultaneous action on the part of the United States. But no sooner had I succeeded in obtaining from my Government its assent to a consideration of the arrangement, and communicated the result to you, than your lordship will be so good as to recollect that I received for answer that Her Majesty's government had in the interval reconsidered its decision, and had finally determined to rely upon the existing statutes as quite effective to answer the desired purpose.

From this survey of the two cases, it must then be obvious that the parallel in which your lordship has attempted is by no means to be re-

garded as complete, inasmuch as, in the one instance, everything that was required as security by a foreign power was actually done to please it, whilst in the other everything required was as positively declined. Hence the responsibility for the evil consequences which was lifted by its own action from the one party, seems to have been entailed with renewed force by its refusal to act upon the other.

Your lordship is pleased to observe that you can never admit that the duties of Great Britain toward the United States are to be measured by the losses which the trade and commerce of the United States may have sustained. To which I would ask permission to reply that no such rule was ever desired. The true standard for the measurement would seem to be framed on the basis of the clear obligations themselves, and the losses that spring from the imperfect performance of them.

With regard to the observations of your lordship respecting the seizure by Her Majesty's government of the two steam war-vessels constructed by Mr. Laird at Liverpool, I have at all times endeavored to bear my feeble testimony to the earnest desire then manifested to put a stop to that most outrageous of all the attempts that have been made to violate the neutrality of this kingdom. At the same time, however, since your lordship has been pleased to open that subject, it is no more than my duty to observe that the proceeding does not appear to have terminated as, in accordance with Her Majesty's dignity, I am compelled to think it should have done, in fully upholding the authority of the sovereign power, but rather in a necessity to resort to an indirect mode of escaping the hazard of recourse to the ordinary process of the courts for the protection due to a foreign nation. So far as the claims of the Government of the United States are concerned, it matters little by what means the end may have been reached. At the same time, it is impossible for it not to have been made painfully conscious in the process that the security of the peace of the two nations from one of the most flagrant violations of international obligations ever attempted, should have
[19] been left to hang upon a *mode of proceeding wholly foreign from the recognized and established law of the land.

The fact of the extraordinary decline of the mercantile navigation of the United States simultaneously with a corresponding increase of that of Great Britain, as shown in the tables appended to my former note, does not appear to be disputed by your lordship; nor yet the other fact, that it sprang from the transfer of vessels from the one side to the other by reason of the ravages committed by armed steamers fitted out from the ports of Great Britain. It is true your lordship is pleased to avoid the natural inference which I have been compelled to draw from this state of things by explaining the process in another way. You are pleased to affirm it as a fact that "it has been common to transfer American merchant-ships, without change of cargo or crew, nominally to British owners, in order to avoid the higher rates of insurance payable during war." But in reply to this I would remark, in the first place, that even if this statement be correct to a far greater extent than I should at present be disposed to admit, it is nothing less than a direct fraud on one of the belligerents, which, if it had had native vigor, instead of being an unthrifty offshoot from a purely British stock, would have furnished to it just ground for general retribution upon British commerce by subjecting it to the most annoying suspicion and severe examination; and, in the next, that the very fact of the admitted rise in the rates of insurance on American ships only brings us once more back to look at the original cause of all the trouble, to wit, the fact of the issue of all the depredating vessels from British ports, with British sea-

men, and with, in all respects but the presence of a few men acting as officers, a purely British character.

Thus it is that, whatever may be the line of argument I pursue, I am compelled ever to return to the one conclusion: the nation that recognized a power as a belligerent before it had built a vessel, and became itself the sole source of all the belligerent character it has ever possessed on the ocean, must be regarded as responsible for all the damage that has ensued from that cause to the commerce of a power with which it was under the most sacred of obligations to preserve amity and peace.

There remain a few minor points in your lordship's note which might have elicited further comments on my part, but for the consideration that the positions taken in regard to them by my Government have been already on a former occasion sufficiently set forth. I am therefore reluctant, by further extending this note, to run the risk of trespassing unnecessarily on your lordship's patience. I trust that, in performing the task to which my sense of duty calls me, I shall not be found to have in any degree transgressed the limits of amicable discussion to which it is the earnest desire of my Government that I should ever adhere, and which it is always my own disposition to observe.

I pray, &c.,

(Signed) CHARLES FRANCIS ADAMS.

[Inclosure 1 in No. 3.]

Mr. Dick, attorney of the United States for the district of Louisiana, to the Secretary of State.

[Extract.]

MARCH 1, 1816.

Attempts to violate the laws by fitting out and arming, and by augmenting the force of vessels, have no doubt been frequent, but certainly, in no instance, successful, except where conducted under circumstances of concealment that eluded discovery. In every instance where it was known that these illegal acts were attempting, or where it was afterward discovered that they had been committed, the persons engaged, as far as they were known, have been prosecuted, while the vessels fitted out, or attempted to be fitted out, have been seized and libeled under the act of the 5th of June, 1794; and when captures have been made by vessels thus fitted out and armed, or in which their force was augmented or increased within our waters, where the property taken was brought within our jurisdiction, or even found upon the high seas by our cruisers, and brought in, it has been restored to the original Spanish owners, and, in some instances, damages awarded against the captors.

An enumeration of the cases in which individuals have been prosecuted for infringing, or attempting to infringe, our neutrality in aid of the governments of New Spain, and in which vessels have been seized and libeled, under the act of the 5th
[20] June, 1794, together with a list of the vessels and property restored to the original Spanish owners, (confining the whole to the operations of the year commencing March, 1815, and ending February, 1816,) will show more conclusively, perhaps, than anything else can, how totally without foundation are the complaints, and how misplaced are the assertions of the minister of Spain on this head.

The names of individuals prosecuted in the district court of the United States for the Louisiana district during the year 1815, for violating, or attempting to violate, the neutrality of the United States, in aid of the government of the United Provinces of New Granada and of the United Provinces of Mexico.

José Alvarez Toledo.
Julius Cæsar Amigone.
Vincent Gambie.
John Robinson.
Romain Very.
Pierre Lameson.
Bernard Bourden.

List of vessels libeled for illegal outfits of the same governments during the same period.

Brig Flora Americana, restored.
Schooner Presidente, condemned.
Schooner Petit Melan, condemned.
Schooner General Bolivar, discontinued.
Schooner Engenen, *alias* Indiana, condemned.
Schooner Two Brothers, restored.

Enumeration of vessels and property brought within the Louisiana district, captured under the flags and by authority of the governments of New Granada and of Mexico, libeled on the part of the original Spanish owners, and restored upon the ground that the capturing vessels had been fitted out and armed, or had their force augmented, within the waters of the United States.

1. Schooner Cometa, restored April, 1815.
2. Schooner Dorada, proceeds restored May 16, 1815, $3,050.
3. Schooner Experimento, restored August 3.
5. The polacca brig De Regla, and cargo; proceeds restored December 18, 1815, $19,209.50.
6. Schooner Alerto, and cargo, being the proceeds of the capture of about eighteen small vessels, restored Denember 18, 1815, $62,150.55.

Damages awarded to the original owners against the captors in the two foregoing cases, $55,272.99.

7. Cargo of the schooner Petit Melan, restored February 1, 1816, $2,444.31.
8. Cargo of the schooner Presidente, February 1, 1816, $10,931.15.
9. Schooner Santa Ritor, and cargo, restored February 1, 1816, $37,962.94.

The preceding account of Spanish property restored to the original proprietors after being in the possession of the enemies of Spain is defective, inasmuch as it does not comprehend the whole of the cases of restoration that have taken place within the period to which the detail is confined.

The very hasty manner in which I have made this communication did not admit of a more accurate statement. The principal cases, however, are included in it.

In several other cases, where the property was claimed for the original Spanish owners, the claims were dismissed because it did not appear that any violation of our neutrality had taken place. The capturing vessels were not armed, nor was their force augmented within our jurisdiction, nor had the captures been made
[21] *within a marine league of our shore. The principles that guided the decision of the court, as well in restoring the property captured, where our neutral means had been used, as in declining all interference where that was not the case, manifest, I think, a disposition to and an exercise of the most rigid neutrality between the parties.

[Inclosure 2 in No. 3.]

BALTIMORE, *September* 7, 1816.

SIR: Immediately upon the receipt of your letters of the 16th of August, I obtained from the collector of that port an affidavit, stating that Thomas Taylor had in April last sworn that he was a citizen of the United States, and, as such, had cleared out the schooner Romp, which vessel the collector also declared, on oath, he believed to have cruised against the vessels of the King of Spain since that time. Upon which affidavit an intelligent justice of the peace of this city, well disposed upon the score of political feeling to do as much as justice required toward the punishment of Taylor for his conduct, issued a warrant, by virtue of which Taylor was arrested. Upon its return I appeared before the justice, (whose name is John Dougherty,) and presented all the documents which were sent to me, in company with your letter, which were read and received as evidence by him. I also caused a sailor who had served on board the Romp, and who was at that time in hospital at this place, to be summoned, as also the editor of the American newspaper in which Taylor's letter had appeared, bearing date at "Baltimore, the 10th of July, 1816;" all of whom were examined on oath before the justice. The sailor was cautioned not to any probable cause to believe he was concerned with or advised Squire Fisk to commit the acts of piracy which were committed by him on his late cruise, and as Taylor never was on board the Romp from the time she left Baltimore. Thus ended this case, as far as I have gone.

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(Signed) ELIAS GLENN.

No. 4.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *August* 30, 1865.

SIR: Having purposely delayed an answer to your letter of the 20th of May, I now resume our correspondence at a time when the civil war has entirely ceased; when the whole territory of the United States is subject to the Government of the Union, and the United States have not an enemy in the world. I resume it, therefore, at a time such as was foreseen in your letter of the 23d of October, 1863, "favorable for a calm and candid examination by either party of the facts or principles involved in cases like the one in question."[1]

I resume it also at a time when Mr. Seward has recovered from the injuries he received from an accident and the wounds inflicted by an assassin, and is therefore able to apply his remarkable powers of mind to the questions at issue; I take this opportunity of saying that no one rejoices more than myself at this happy recovery from injuries so serious.

In continuing, in this state of affairs, our correspondence, I must again express my satisfaction at finding that you do justice to the impartial intentions of Her Majesty's government. I must here repeat that you have never permitted yourself to doubt the favorable disposition of the Queen's ministers to maintain amicable relations with the Government of the United States; and you attribute the avoidance of the gravest of complications to a full conviction that Her Majesty's government has never been animated by any aggressive disposition toward the United States, but that, on the contrary, it has steadily endeavored to discountenance, and in a measure to check, the injurious operations of many of Her Majesty's subjects.[2]

This decisive testimony from a person of your high character, who has now for four years held the confidential position of minister of the United States accredited to Her Majesty, and has thereby been enabled to judge of the intentions of Her Majesty's government throughout this long and destructive contest, is most gratifying to Her Ma-
[22] jesty's *government. It is most satisfactory to know that you share in none of those suspicions and indorse none of those charges of an unfriendly and unfair disposition on the part of Her Majesty's government, with which public writers and speakers have endeavored to poison the public mind in the United States, and to produce ill-will and hatred between the two nations.

The question then, as I understand it, is now reduced to these terms: whether Her Majesty's government have judged rightly the state of a friendly nation disturbed by a formidable insurrection, and whether they have correctly applied the law of nations in respect to their duties toward that friendly nation.

In recapitulating your statements on this subject, you say "that the injuries thus received by a country which has meanwhile sedulously endeavored to perform all its obligations, owing to the imperfection of the legal means at hand to prevent them, as well as the unwillingness to seek for more stringent powers, are of so grave a nature as in reason and justice to constitute a valid claim for reparation and indemnification."

[1] Parliamentary Paper, North America, No. 1, 1864.
[2] Mr. Adams, April 7, 1865.

Differing, as Her Majesty's government do, from your statement of the facts upon which the judgment of the two governments is to be ultimately formed, I lay down with confidence the following propositions:

1. That the history of modern nations affords no example of an insurrection against a central government so widely extended, so immediate in its operations, so well and so long prepared, so soon and so completely furnished with the machinery of civil government, a national representation, generals and officers of high military reputation, armies fully equipped, and fortifications recently in possession of the established government.

2. That intelligence reached Her Majesty's government, in the spring of 1861, that seven combined States had declared in favor of this insurrection; that three more States, including the great and powerful State of Virginia, were preparing to join them; that these States commanded upward of 3,000 miles of sea-coast; that they comprised more than 5,000,000 of people, exclusive of the negro slaves; that the president of the insurgent government had proclaimed his intention of issuing letters of marque and reprisal; that the President of the United States, on the other hand, had proclaimed his intention to establish a blockade of all the ports of the Southern States; and that in these circumstances the commander of Her Majesty's naval forces on the North American station earnestly solicited instructions for his guidance.

3. That in view of these extraordinary events, unexpected and undesired, Her Majesty decided to proclaim her neutrality in this contest; to allow the belligerent blockade of more than 3,000 miles of coast, including of course the right of search, detention, and capture on the part of the United States, and, on the other hand, as in duty bound, to recognize in the so-called Confederate States the rights of a belligerent power.

4. That Her Majesty's government put in force with fairness and impartiality the neutrality they had proclaimed.

5. That the foreign-enlistment act, which is intended in aid of the duties and rights of a neutral nation, can only be applied when a ship is armed or fitted out, or begun to be armed or fitted out, and even in that case only when proof can be obtained that the ship so armed or equipped, or begun to be armed or equipped, is intended for the service of a power at war with a friend or ally of Her Majesty.

6. That in the instance of the Oreto, the case justifying the detention of the vessel was not complete; and in the case of the Alabama, the proof was declared to be complete only on the very morning when the owners of the Alabama, having by some means obtained information of what was intended, got away on a false pretense.

7. That the Oreto was begun to be built here, was afterward detained and tried at Nassau, was acquitted, and was afterward completed at Wilmington, a port of the confederates.

8. That the iron-clad rams were detained, and afterward seized at Birkenhead; that the so-called Canton, or Pampero, was prosecuted and convicted in Scotland; that the Victor, afterward the Rappahannock, was forced to take refuge at Calais in order to avoid seizure, and till the close of the war never appeared on the seas.

9. That it is not enough to say that the foreign-enlistment act might have been amended and made more efficient, unless it be shown that the amendments suggested would have been clearly efficient, and would have been consistent with the laws of a free country.

10. That nothing but the most extensive employment of spies and in-

formers, and the most arbitrary powers of detention and seizure on the most vague and slight suspicion, could have prevented a British or American merchant, in combination with a confederate enemy of the United States, from sending an unarmed ship to distant neutral waters, from sending arms to the same waters, and from combining the ship and the arms in a hostile cruiser against the commerce of the United States.

[23] *11. That the Shenandoah was dispatched and armed in this manner.

12. That there is no reason or ground whatever to accuse Her Majesty's government of failure in the performance of their international obligations during the four years of civil war, and consequently no valid claim can be made for reparation and indemnification.

With respect to your allegation that the concession of belligerent rights to the confederates was "precipitate and unprecedented," I answer both epithets by saying, first, that our declaration followed, and did not precede, your own declaration of the intended blockade of six or seven considerable ports, and the declaration of an intention on the part of the confederates to issue letters of marque; and, secondly, that a sudden insurrection of such magnitude being unprecedented, our recognition of its existence was necessarily likewise unprecedented.

But let me refer for a short time both to the law laid down by your own courts on this subject and the state of facts as shown by official documents. The judgment of the Supreme Court of the United States, given in 1862, ("Black's Reports, Supreme Court," vol. ii, pp. 666–670,) lays down with equal sense and learning the following propositions:

"The right of prize and capture has its origin in the *jus belli*, and is governed and adjudged under the law of nations. *To legitimate the capture of a neutral vessel or property on the high seas, a war must exist de facto*, and the neutral must have a knowledge or notice of the intention of one of the parties belligerent to use this mode of coercion against a port, city, or territory in the possession of the other."

"The parties belligerent in a public war are independent nations; but it is not necessary to constitute war that both parties should be acknowledged as independent nations or sovereign states. *A war may exist when one of the belligerents claims sovereign rights as against the other.*"

"A civil war is never solemnly declared; it becomes such by its accidents—the number, power, and organization of the persons who originate and carry it on. When the party in rebellion occupy and hold in a hostile manner a certain portion of territory; have declared their independence; have cast off their allegiance; have organized armies; have commenced hostilities against the former sovereign, the world acknowledges them as belligerents and the contest as a war."

"'A civil war,' says Vattel, 'breaks the bonds of society and government, or at least suspends their force and effect; it produces in the nation two independent parties, who consider each other as enemies, and acknowledge no common judge. Those two parties, therefore, must necessarily be considered as constituting, at least for a time, two separate bodies—two distinct societies. Having no common superior to judge between them, they stand in precisely the same predicament as two nations who engage in a contest and have recourse to arms.'

"As a civil war is never publicly proclaimed, *eo nomine*, against insurgents, its actual existence is a fact in our domestic history which the court is bound to notice and to know. The true test of its existence, as found in the writings of the sages of the common law, may be thus summarily stated: 'When the regular course of justice is interrupted by revolt, rebellion, or insurrection, so that the courts of justice cannot be kept open, *civil war exists*, and hostilities may be prosecuted on the same footing as if those opposing the government were foreign enemies invading the land.'"

"By the Constitution, Congress alone has the power to declare a national or foreign war. It cannot declare war against a State or any number of States by virtue of any clause in the Constitution. The Constitution confers on the President the whole executive power. He is bound to take care that the laws be faithfully executed. He is commander-in-chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual service of the United States. He has no power to initiate or declare a war either against a foreign nation or a domestic State. But by the acts of Congress of the 28th February, 1795, and 3d March, 1807, he is

authorized to call out the militia and use the military and naval forces of the United States in case of invasion by foreign nations, and to suppress insurrection against the government of a State or of the United States."

"If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does not 'initiate the war, but is bound to accept the challenge without waiting for any special legislative authority. And whether the hostile party be a foreign invader, or States organized in rebellion, it is none the less a war, although the declaration of it be 'unilateral.' Lord Stowell (1 Dodson, 247) observes, 'It is not the less a war on *that account*, for war may exist without a declaration on either side.' It is so laid down by the best writers on the law of nations. A declaration of war by one country only is not a mere challenge to be accepted or refused at pleasure by the other."

[24] *"This greatest of civil wars was not gradually developed by popular commotion, tumultuous assemblies, or local unorganized insurrections. However long may have been its previous conception, it nevertheless sprung forth suddenly from the parent brain, a Minerva in the full panoply of war. The President was bound to meet it in the shape it presented itself, without waiting for Congress to baptize it with a name, and no name given to it by him or them could change the fact.

"It is not the less a civil war, with belligerent parties in hostile array, because it may be called an 'insurrection' by one side, and the insurgents be considered as rebels or traitors. It is not necessary that the independence of the revolted province or State be acknowledged in order to constitute it a party belligerent in a war according to the law of nations. Foreign nations acknowledge it as war by a declaration of neutrality. The condition of neutrality cannot exist unless there be two belligerent parties. In the case of the Santissima Trinidad, (7 Wheaton, 337,) this court says: 'The Government of the United States has recognized the existence of a civil war between Spain and her colonies, and has avowed her determination to remain neutral between the parties. Each party is therefore deemed by us a belligerent nation, having, so far as concerns us, the sovereign right of war.'

"The law of nations is also called the law of nature; it is founded on the common consent, as well as the common sense, of the world. It contains no such anomalous doctrine as that which this court are now for the first time desired to pronounce, to wit, that insurgents who have risen in rebellion against their sovereign, expelled her courts, established a revolutionary government, organized armies, and commenced hostilities, are not *enemies* because they are *traitors;* and a war levied on the government by traitors, in order to dismember and destroy it, is not a *war* because it is an 'insurrection.'

"Whether the President, in fulfilling his duties as commander-in-chief in suppressing an insurrection, has met with such armed hostile resistance and a civil war of such alarming proportions as will compel him to accord to them the character of belligerents, is a question to be decided *by him*, and this court must be governed by the decisions and acts of the political departments of the governments to which this power was intrusted. He must determine what degree of force the crisis demands. *The proclamation of blockade is itself official and conclusive evidence to the court that a state of war existed which demanded and authorized a recourse to such a measure under the circumstances peculiar to the case.*"

The course of Her Majesty's government followed the course of events in America.

It appears by the Times of 3d May, 1861, that I stated in the House of Commons on the preceding day, (2d May,) "Her Majesty's government heard the other day that the Confederate States have issued letters of marque; and to-day we have heard that it is intended there shall be a blockade of all the ports of the Southern States."

On the 6th of May I stated in the House of Commons the intention of the goverment, formed after due deliberation, to recognize the Southern States as belligerents.

On the 10th May I received a dispatch from Lord Lyons making the following announcement: "I have the honor to inclose copies of a proclamation of the president of the southern confederacy inviting application for letters of marque, and also a proclamation of the President of the United States declaring that southern privateers will be treated as pirates, *and announcing a blockade of the southern ports.*"

Thereupon the intention of Her Majesty's government previously announced was carried into effect, and the proclamation of the 13th May, 1861, was issued.

It is very remarkable that an English schooner, the Tropic Queen, was captured for a breach of blockade, consisting in the act of lading her cargo on the 13th and 14th of May, 1861.

The offense in this case was committed on the very day that the Queen acknowledged the existence of civil war. The court, in giving judgment, referred to the notorious facts of the secession of the Southern States, and proceeded thus:

> These facts, as set forth by the President, with the assertion of the right of blockade, amount to a declaration that civil war exists. *Blockade itself is a belligerent right, and can only legally have place in a state of war, &c.*

What you contend for, I imagine, both as to the commencement of the war and as to its close, is that the United States of America had a full claim to exercise all the rights of belligerents, but that Great Britain had no just claim to exercise any of the rights of neutrals.

This position, however, Great Britain never can admit.

Recognitions by the United States of belligerent rights belonging to insurgents have been frequent; Buenos Ayres, Colombia, Mexico have been acknowledged by the United States to have belligerent rights [25] against Spain; Brazil and Artigas against Portugal; *Texas against Mexico. But in no case have these insurgent forces sprung up at once fully armed to the amount of five millions of men.

With respect to the Oreto and the Alabama, I have only again to repeat that up to the time when the Oreto left these shores, and up to the day when the Alabama escaped on a false pretense, the law-officers of the Crown had not by any legal opinion enabled Her Majesty's government to give any orders for the detention of these vessels.

I entirely concur with you that there was no use in giving orders on the 31st of July for detaining a vessel which had made its escape on the 29th. But up to the 29th the law-officers had not thought the evidence sufficient to justify detention; and I cannot by any means admit what you seem to insinuate, that the law-officers were deficient either in knowledge of the law or in willingness to apply it. Her Majesty's government fully accept the responsibility of their opinions.

And it will be observed that the law-officers, in addition to the reports of the custom-house officers, were in possession of all the information which it was in your power to furnish.

You allude to the case of the American revolution, and the conduct of France in not recognizing the belligerent rights of the insurgents then in rebellion against the British Crown.

Let us extend our view somewhat wider. There have been, in the period beginning in 1765 and ending in 1865, three cases of a somewhat similar kind.

The first is that of the American revolution; the second is that of the revolt of the South American republics; the third is that of the civil war which from 1861 to 1865 desolated the United States of North America.

In the first case the court of France sought only to injure Great Britain.

In this spirit, in 1776, before the Declaration of Independence, the French government put itself in connection with Arthur Lee through Baron de Beaumarchais, and with Benjamin Franklin through Dubourg, offering to the United States the supplies they needed. When, however, the news of Burgoyne's surrender reached France, the French government took a more decided course. In February, 1778, they signed two treaties, one of commerce and one of alliance, with the

United States of America. Nor were the motives of these acts on the part of Louis XVI by any means concealed.

M. Gerard was ordered to declare on the King's part to Arthur Lee and Silas Deane, the commissioners of the United States, "that His Majesty was fixed in his determination not only to acknowledge, but to support our independence by every means in his power; that in doing this he might probably soon be engaged in a war, with all the expenses, risks, and damages usually attending it, yet he should not expect any compensation from us on that account, nor pretend that he acted wholly for our sakes; *since besides his real good-will, it was manifestly the interest of France that the power of England should be diminished by our separation from it.*[1]

I am not arguing whether this conduct was justifiable; I am only showing that France in the American war took a part hostile to Great Britain, in order to promote her own interests.

In the same spirit, in order to promote the interests of France, and injure those of Great Britain, the government of Louis XVI, two years after the date of the American Declaration of Independence, made an alliance offensive and defensive with the United States.

Such conduct, however it may be excused or even admired in Europe or in America, could not form a precedent for Great Britain in the late civil war. Her Majesty's government had no wish to favor the separation of the Southern States, with a view to injure the power or check the progress of the United States. It has been the wish of Her Majesty's government, who had received no injury from either the Northern or the Southern States, and was living in amity with both, when hostilities of the most violent character commenced between them, to preserve an honest and impartial neutrality.

The next case to which we have looked has been the insurrection of the South American republics against Spain, and of the empire of Brazil against Portugal.

This insurrection began slowly and partially at Buenos Ayres on the 14th of May, 1810, by the formation of a junta and the deposition of the viceroy; the government, however, being carried on in the name of the King of Spain until January, 1813, when a provisional government was established. On the 9th of July, 1816, the provinces of the Rio de la Plata issued a declaration of independence, and on the 20th of April, 1819, a constitution was published by the congress.

In 1811 the insurrection commenced in Paraguay, the Spanish
[26] governor was deposed, *and a government established under the direction of Dr. Francia. On the 12th of October, 1813, a constitution was proclaimed.

In 1811, civil war commenced in Chili, but the declaration of independence was not issued until the 12th of February, 1818, and the war continued until 1820.

The revolution in Peru commenced in 1821, a declaration of independence being issued on the 15th of July, 1821, and the war continuing until 1824.

On the 15th of September, 1821, Guatemala declared her independence, which, however, was not finally established until the 1st of July, 1823.

The revolution in Colombia (including Venezuela, Equator, and New Granada) commenced April 19, 1810, at Caracas. On the 5th of July,

[1] See "Diplomacy of the Revolution," by William Henry Trescot. New York, 1852.

1811, the Congress declared Colombia an independent state, but the war with Spain continued until November, 1823.

In 1815 the President of the United States allowed belligerent rights to the South American states, and proclaimed a strict neutrality. This proclamation was recognized by the Supreme Court and other tribunals of the United States as the guide for their decisions.

It is here that Her Majesty's government have looked for precedents. The United States had been from 1793 to 1815, with the exception of two years, neutrals amid the great wars of Europe. Their wisest statesmen and their most learned judges had studied the law of nations profoundly with a view to extract from that law the rules for their own conduct, and the elements of their judgment on the conduct of others.

In 1794 the United States Government had admitted the principle that if, after prohibiting the equipment and armament of cruisers in American ports, they abstained from using the means in their power to restore prizes captured and brought into United States ports by cruisers subsequently equipped or armed in those ports in violation of the prohibition, they were bound to give compensation for such prizes; but they appear to have limited their admission of liability to that particular class of cases.

When, therefore, the continent upon which they have erected a free and powerful state was convulsed with civil war, the President, Secretaries of State, Chief Justices, and other judges of the United States, doubtless considered maturely the course they were bound to pursue.

You seem to have supposed that my meaning in reference to Portugal was that the United States in that case had been in the wrong, and therefore if Great Britain had been wrong in the present instance, the United States could not reproach us. But no such argument entered into my conception. My argument was this:

Portugal, during the war of South American independence, complained of captures by American vessels of war built in the United States, which had not been detained and seized and condemned in the ports of the United States.

The answer of Mr. Adams to these complaints was, as I conceived, valid and conclusive. He said in effect: "Had you been able to prosecute and convict in the United States, our courts were open to you, and every facility was afforded you. But you cannot make the Government of the United States responsible for the acts of men on the high seas over whom the United States exercise no jurisdiction."

Having repeated the very terms used by Mr. Adams, I say, "To this most just principle, which was again referred to by Mr. Secretary Clayton, and maintained against the government of Portugal to this hour, the Government of the United States must be held still to adhere." In fact, there was no motive to bias their judgment on this bloody controversy. Spain and Portugal, weakened by bad government, and exhausted by recent struggles for existence, could inspire no apprehension and offer no temptation to the rising and vigorous power of the great western republic. The conduct of the United States Government, therefore, is eminently deserving of our study, and, I may add, of our respect.

But as you have commented at some length on the treatment of Portugal by the United States during the war of South American independence, I will enter more fully than I had before done into that question.

The correspondence to which I refer began in December, 1816, and closed with a letter of the Portuguese minister in November, 1850. It

cannot be pretended that the reclamations of a friendly power extending over thirty-four years did not receive the gravest attention of the American Government.

In his first letter the Portuguese envoy at Washington complains that Mr. Taylor, of Baltimore, an American citizen, had directed Captain Fish, of the Romp, an American ship, to cruise as a privateer under the insurgent colors of Buenos Ayres against the subjects of Portugal.

He adds: "The 18th of last month (November) the frigate Clifton, Captain Davis, armed with thirty-two guns of various calibers, [27] and a crew of two hundred men, sailed from *Baltimore for Buenos Ayres. This ship anchored below that port, where it has remained for about a fortnight or more waiting for the American ship Independence of the South, armed with sixteen guns, and for the ships Romp, Tachahoe, Montezuma, and Spanker, and two others newly constructed, which were fitting with great activity and which had not yet got names. All were to sail together to cruise in the eastern and western seas of South America, under the insurgent colors of Buenos Ayres. No doubt can be entertained of their instructions being the same as those of Captain Fish, and that they will act hostilely against Portuguese ships."

The Portuguese envoy, Joseph Correa de Serra, prays for an amendment of the law of the United States with a view to render it more efficient in such cases. A law having been passed by Congress for this purpose, the Portuguese envoy, in May, 1817, requests that the President will desire the United States officers on the outposts to use greater vigilance.

In March, 1818, he complains that three Portuguese ships have been captured "by privateers fitted in the United States, manned by American crews, and commanded by American captains, though under insurgent colors."

In October of the same year the Portuguese envoy complains that a Portuguese prize is fitting in the Patuxent to cruise against Portuguese commerce.

In November of the same year the Portuguese minister states to Mr. Adams that, obliged by his duty to inquire into the nature of the armed ships that had of late insulted the flag of his sovereign, and committed incalculable depredations on the property of his subjects, he had found, to his sorrow, multiplied proofs that many of them were owned by citizens of the United States, and had been fitted in the ports of the Union. He goes on to complain of the difficulties in the way of prosecutions, but compliments the President on his "honorable earnestness."

In December of the same year the Portuguese minister complains of the armed vessel Irresistible, which had been committing "depredations and unwarrantable outrages on the coast of Brazil." He says, it is proved by depositions that John Daniels, the commander of the ship, is an American, and all the crew are Americans. He prays that, if the ship should come into an American port, means may be taken to bring the said captain and crew within reach of the laws made to punish such scandalous proceedings.

In March, 1819, M. Correa de Serra states, as minister of his sovereign, that Artigas, whose flag is frequently waving in the port of Baltimore, and which is carried by Portuguese prizes in the ports of the Union, has been expelled far from the countries which could afford him the power of navigating, and has not a foot-length of sea-shore in South

America where he can show himself. He prays that the Artigan flag may be declared illegal.

In November, 1819, after expressing his gratitude for the proceedings of the Executive, the same minister complains that the evil is rather increasing. He is in possession of "a list of fifty Portuguese ships, almost all richly laden, some of them East Indiamen, which had been captured during a period of profound peace. One city alone on the coast of the United States had twenty-six armed ships which preyed on Portuguese commerce, and a week ago three armed ships of this kind were in that port waiting for a favorable occasion for sailing on a cruise."

In June, 1820, the Portuguese minister complains that a Portuguese prize had been sold by auction at Baltimore to Captain Chase, (a notorious privateersman,) and was to be immediately fitted out as a privateer to cruise against the Portuguese Indiamen.

In July of the same year the Portuguese minister sends a list of "the names and value of nineteen Portuguese ships and their cargoes, taken by *private armed ships, fitted in the ports of the Union by citizens of those States.*" His sovereign wishes the affair to be treated with that candor and conciliating dignified spirit which becomes two powers who feel a mutual esteem, and have a proper sense of their moral integrity. "In this spirit I have the honor to propose to this Government to appoint commissioners on their side, with full powers to confer and agree with His Majesty's ministers on what reason and justice demand.'

In December 1820 the Chevalier Amado Grehon transmitted to Mr. Adams a copy of twelve claims, with the value of the ships, desiring him to add them to the list furnished by the Chevalier Correa de Serra.

In April, 1822, the same minister repeats the proposal made in July 1820, "of having recourse to commissaries chosen by both governments for the purpose of arranging the indemnities justly due to Portuguese citizens for the damage which they have sustained by reason of piracies supported by the capital and the means of citizens of the United States; an essential condition which, in this way repairing the past, secures also the future."

[28] *On the 25th of May, 1850, the chargé d'affaires of Portugal, writing to the Secretary of State of the United States, declares: "The undersigned is authorized to come to an understanding with the new Secretary of State upon the subject, and to submit the voluminous documents and papers in his possession to the joint examination and decision of the commissioners or arbitrators appointed by the American Government on the one part, and the undersigned on behalf of Her Majesty's Government on the other," &c.

Having thus related the complaints of the Portuguese government during the years which elapsed from 1816 to 1822, and from 1822 to 1850, I will now give from the organs of the United States the answers which that Government gave to these solemn and reiterated complaints.

In March, 1817, the Secretary of State transmitted to the Portuguese minister at Washington an act of Congress passed on the 3d of that month to preserve more effectually the neutral relations of the United States. On the 14th of March, 1818, in answer to a letter complaining of the capture of three Portuguese ships by privateers, Mr. Adams says:

The Government of the United States having used all the means in its power to prevent the fitting out and arming of vessels in their ports to cruise against any nation with whom they are at peace, and having faithfully carried into execution the laws enacted to preserve inviolate the neutral and pacific obligations of this Union, cannot consider itself bound to indemnify individual foreigners for losses by captures, over which the United States have neither control nor jurisdiction. For such events no

nation can in principle, nor does in practice, hold itself responsible. A decisive reason for this, if there were no other, is the inability to provide a tribunal before which the facts can be proved.

The documents to which you refer must of course be *ex parte* statements, which in Portugal or in Brazil, as well as in this country, could only serve as a foundation for actions in damages, or for the prosecution and trial of the persons supposed to have committed the depredations and outrages alleged in them. Should the parties come within the jurisdiction of the United States, there are courts of admiralty competent to ascertain the facts upon litigation between them, to punish the outrages which may be duly proved, and to restore the property to its rightful owners should it also be brought within our jurisdiction, and found, upon judicial inquiry, to have been taken in the manner represented by your letter. By the universal law of nations the obligations of the American Government extend no further.

The Secretary of State in subsequent letters promises to prosecute in the United States courts persons chargeable with a violation of the laws of the United States in fitting out and arming a vessel within the United States for the purpose of cruising against the subjects of the Queen of Portugal.

To the proposal to appoint commissioners made in July, 1820, the United States Secretary of State, on the 30th of September of the same year, replies as follows:

The proposal contained in your note of the 16th of July last has been considered by the President of the United States with all the deliberation due to the friendly relations subsisting between the United States and Portugal, and with the disposition to manifest the undeviating principle of justice by which this government is animated in its intercourse with all foreign governments, and particularly with yours. I am directed by him to inform you that the appointment of commissioners to confer and agree with the ministers of His Most Faithful Majesty upon the subject to which your letter relates, would not be consistent either with the Constitution of the United States, *nor with any practice usual among civilized nations.*"

He proceeds to say:

If any Portuguese subject has suffered wrong by the act of any citizen of the United States, within their jurisdiction, it is before those tribunals that the remedy is to be sought and obtained. For any acts of citizens of the United States, committed out of their jurisdiction and beyond their control, the Government of the United States is not responsible.

To the war in South America, to which Portugal has for several years been a party, the duty and the policy of the United States has been to observe a perfect and impartial neutrality.

The same reply is again given to Chevalier Amado Grehon in a letter dated the 30th of April, 1822:

I am at the same time directed to state that the proposition of the Chevalier Correa de Serra, in his note of the 16th of July, 1820, for the appointment of commissaries chosen by both governments to arrange indemnities claimed by Portuguese citizens for damages stated by them to have been sustained by reason of piracies supported
[29] by the *capital and means of citizens of the United States cannot be acceded to.

It is a principle well known and well understood that no nation is responsible to another for the acts of its citizens, committed without its jurisdiction and out of the reach of its control.

The policy of the United States is further explained in a dispatch of Mr. Secretary Adams to General Dearborn, dated the 25th of June, 1822. It is there set forth that in the critical state of the relations of the two countries it is necessary to employ the agency of a person fully qualified to represent the interests of the United States. It is affirmed that whenever Portuguese captured vessels have been brought within the jurisdiction of the United States, decrees of restitution have been pronounced.

In referring, however, to the lists of captures and the demand of a joint commission to determine and assess the damages to be paid by the United States, the former refusal was thus repeated: "As there was no precedent for the appointment of such a commission under such circumstances, and as not a single capture had been alleged for which the

United States were justly responsible, this proposal was of course denied; and nothing further was heard upon the subject until the 1st of April last, when a note was received from the present chargé d'affaires of Portugal, leading to a correspondence, copies of which are now furnished you."

The correspondence seems not to have been resumed till 1850, when, as has been shown, the demand for a commission was repeated.

The Secretary of State of the United States thereupon gave this summary and final answer, dated May 30, 1850:

> The undersigned is surprised at the reappearance of these obsolete reclamations, accompanied by the renewal of the ancient proposition to appoint a joint commission to determine and assess damages, a proposition which was rejected at the time upon substantial grounds; and without the minister's assurance to that effect, the undersigned would not have supposed it credible that Portugal seriously cherished any intention to revive them. In reply, therefore, to the note which the minister of Her Most Faithful Majesty has presented in the name of his government, the undersigned must now, by the President's order, inform him that he declines re-opening the proffered discussion.

This dispatch is signed "John M. Clayton."

A long and able dispatch of the Portuguese minister at Washington, recapitulating all the grievances of Portugal, dated November 7, 1850, does not appear to have received an answer.

The practice of the United States courts during this war of South American colonies against Spain and Portugal seems to have been confined to the restitution of prizes actually brought into the ports of the United States. The doctrine of the courts of justice upon the subject was thus laid down by Justice Story, in pronouncing the decision of the Supreme Court in the case of the Amistad de Rues, (5 Wheaton, p. 388.) Speaking of the cases of damages, he says:

> When called upon by either of the belligerents *to act in such case, all that justice seems to require is that the neutral nation shall fairly execute its own laws, and give no asylum to the property unjustly captured. It is bound, therefore, to restore the property, if found within its ports; but beyond this, it is not obliged to interpose between the belligerents.* If, indeed, it were otherwise, there would be no end to the difficulties and embarrassments of neutral prize tribunals. They would be compelled to decide in every variety of shape upon marine trespasses, *in rem* and *in personam* between belligerents, without possessing adequate means of ascertaining the real facts, or of compelling the attendance of foreign witnesses, and thus they would draw within their jurisdiction almost every incident of prize. Such a course of things would necessarily create irritations and animosities, and very soon embroil neutral nations in all the controversies and hostilities of the conflicting parties. Considerations of public policy come, therefore, in aid of what we consider the law of nations on this subject; and we may add that Congress, in its legislation, has never passed the limit that is here marked out.

To the same effect is the doctrine laid down by the Supreme Court in the case of the brig Alerta:[1]

> A neutral nation may, if so disposed, without a breach of her neutral character, grant permission to both belligerents to equip their vessels of war within her territory. But without such permission the subjects of such belligerent powers have no right to equip vessels of war, or to increase or augment their force, either with arms or with men, within the territory of such neutral nation. Such unauthorized acts violate her sovereignty and her rights as a neutral. All captures made by means of such equipments are illegal in relation to such nation, and it is competent to her courts to
> [30] punish the offenders, and, in case the prizes taken by her are brought *infra præsidia*, to order them to be restored.

In comparing the course pursued by the Government and Congress of the United States in the case of the South American civil war with that pursued by Her Majesty's government in the case of the North American civil war, the following differences are perceptible:

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[1] Curtis's Reports, vol. iii, p. 382

The number of vessels built and fitted out in American ports which successfully evaded the provisions of the laws made to restrain them, and proceeded to cruise against Portuguese commerce, was very great: those which escaped the execution of the similar laws of Great Britain were very few. In the former case these illegal cruisers must have been thirty or forty; in the latter, three or four.

In the case of the South American civil war the cruisers in question were generally commanded by citizens of the United States, and navigated by crews of the neutral nation; in the case of the North American civil war, no English captain appears to have commanded a cruiser; and the crews were generally, though not altogether, from the States in insurrection.

But there is one essential point on which the United States and Great Britain appear entirely to agree. The United States when neutral refused to be responsible for captures at sea not brought within their jurisdiction, or to listen to a proposal to appoint a commission to assess damages; the government of the United Kingdom have taken a similar course.

It is true that in applying the principle there has been a divergency of practice. The United States admitted the prizes to their harbors, but restored them, if practicable, when called upon by the decrees of courts of law, to their owners. The government of Great Britain refused admission altogether to such prizes.

The principle is the same, and it is hardly worth while to dispute which course was most inconvenient to the insurgent cruisers. It appears to me, I confess, that the course pursued by Her Majesty's government tended more effectually to discourage insurgent cruisers than that pursued by the United States.

But as to the principle involved, let me ask you, supposing a merchant or passenger vessel belonging to the United States were to go to the coast of Madagascar, and were there to meet a ship from Boston with cannon and muskets, and the merchant-ship being then armed were to take part against Brazil in the war between Brazil and Paraguay; let me ask, I say, whether your government would think themselves bound to afford reparation to Brazil for all the captures made by that ship? Yet such is the case of the Shenandoah.

It seems to Her Majesty's government that if the liability of neutral nations were stretched thus far, this pretension, new to the law of nations, would be most burdensome, and, indeed, most dangerous.

A maritime nation whose people occupy themselves in constructing ships and cannon and arms might be made responsible for the whole damages of a war in which that nation has taken no part.

I am thankful, therefore, to Mr. Adams for having in 1818, 1820, and 1822 shielded maritime powers by his conclusive argument from such alarming liabilities.

You say, indeed, that the Government of the United States altered the law at the urgent request of the Portuguese minister.

But you forget that the law thus altered was the law of 1794, and that the law of 1818 then adopted was, in fact, so far as it was considered applicable to the circumstances and institutions of this country, the model of our foreign-enlistment act of 1819.

Surely, then, it is not enough to say that your Government, at the request of Portugal, induced Congress to provide a new and more stringent law for the purpose of preventing depredations, if Great Britain has already such a law. Had the law of the United States of 1818 not been already in its main provisions adopted by our legislature, you might

reasonably have asked us to make a new law; but surely we are not bound to go on making new laws, *ad infinitum*, because new occasions arise.

The fact is, this question of a new law was frequently discussed, but the conclusion arrived at was that, unless the existing law after a sufficient trial should be proved to be practically inadequate, the object in view would not be promoted by any attempt at new legislation. The existing law has, in fact, not proved inadequate, when circumstances of strong suspicion have been so far established as to justify the government in ordering the detention of the suspected vessels, and it is by no means certain that any possible alteration of the law would enable more to be done in the way of prevention than this. That power was exercised in the case of the rams in the Mersey, and of the Canton or Pampero in the Clyde; and in neither case has the power exercised been censured or revoked either in a court of law or by any vote of Parliament.

[31] *If it be said, as some persons of high authority in Parliament have said, that the executive government of the United Kingdom exercised in these cases an illegal power, my answer is, that whatever force such an argument might have in a court of law or in Parliament, it can have none in the mouth of a Secretary of State of the United States. For, whether exercised legally or illegally, the power was equally effective in protecting the commerce and the harbors of the United States against ships built and equipped in British ports.

With respect to orders to refuse entrance into our ports to all ships partly fitted up in the United Kingdom for the service of the confederates, there was extreme difficulty in giving any such orders.

During the South American civil war, it was found practicable to bring to New York or Boston witnesses to prove that a South American cruiser had been built and armed in Baltimore. But to carry witnesses from Liverpool to Nassau or Jamaica to prove the building of the Alabama at Birkenhead would have been a fruitless effort.

To produce copy of a conviction of the Alabama was impossible, as she had escaped conviction by flight; to carry witnesses to the Cape of Good Hope, to Melbourne, and elsewhere, for the purpose of showing that her owners had violated the foreign-enlistment act, was equally out of the question.

No less impracticable would it have been to say to our governors, "You may admit the Alabama, you may admit the Stonewall, but you must not admit the Florida."

In your letter of the 23d of October, 1863, you were pleased to say that the Government of the United States is ready to agree to any form of arbitration.

Her Majesty's government have thus been led to consider what question could be put to any sovereign or state to whom this very great power should be assigned.

It appears to Her Majesty's government that there are but two questions by which the claim of compensation could be tested. The one is: Have the British government acted with due diligence, or, in other words, with good faith and honesty, in the maintenance of the neutrality they proclaimed? The other is: Have the law-officers of the Crown properly understood the foreign-enlistment act when they declined, in June, 1862, to advise the detention and seizure of the Alabama, and on other occasions when they were asked to detain other ships building or fitting in British ports?

It appears to Her Majesty's government that neither of these ques-

tions could be put to a foreign government with any regard to the dignity and character of the British Crown and the British nation.

Her Majesty's government are the sole guardians of their own honor. They cannot admit that they may have acted with bad faith in maintaining the neutrality they professed. The law-officers of the Crown must be held to be better interpreters of a British statute than any foreign government can be presumed to be. Her Majesty's government must therefore decline either to make reparation and compensation for the captures made by the Alabama, or to refer the question to any foreign state.

Her Majesty's government conceive that if they were to act otherwise they would endanger the position of neutrals in all future wars.

Her Majesty's government are, however, ready to consent to the appointment of a commission to which shall be referred all claims arising during the late civil war, which the two powers shall agree to refer to the commissioners.

I cannot conclude without taking this opportunity to ask you to join with Her Majesty's government in rejoicing that the war has ended without any rupture between two nations which ought to be connected by the closest bonds of amity.

The Government of the United States have carried on to a successful issue, with great fortitude and perseverance, a civil war of unequaled magnitude.

In the course of this war they have resolved to abolish slavery. The British nation have always entertained, and still entertain, the deepest abhorrence of laws by which men of one color were made slaves of men of another color. The efforts by which the United States Government and Congress have shaken off slavery have, therefore, the warmest sympathies of the people of these kingdoms.

The same sympathies will accompany the President and Congress of the United States in endeavoring to reorganize the Southern States on the basis of equal freedom.

Nor is there any question in dispute which seems likely to disturb the friendship of two nations which, the one in Europe, and the other in America, are distinguished for their love of liberty. Let our two nations, therefore, instead of captious discussions, respect the honor and believe in the friendly intentions of each other. In this manner we may preserve unbroken the ties of peace, and exercise a beneficial influence on the future destinies of the nations of the world.

I am, &c.,

(Signed) RUSSELL.

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[32] * No. 5.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, September 18, 1865. (Received September 19.)

MY LORD: I have had the honor to receive your note of the 30th of last month in reply to mine of the 20th of May last.

It gives me great satisfaction to be the medium of communicating to my Government the very friendly assurances of your lordship. I cannot entertain a doubt that they will be fully appreciated.

In respect to the reference which you have done me the honor to make to me, as having at no time entertained a doubt of the intentions of Her Majesty's ministers to maintain amicable relations with my Government during the late severe struggle in my country, I am happy to believe that your lordship has not essentially misunderstood my sentiments. At the same time that I cheerfully confirm such declarations as may have been made by me on that subject in the correspondence I have heretofore had the honor to hold with your lordship, I trust I may be permitted to claim, on behalf of my own Government, the credit of intentions to the full as amicable. Indeed, without the presence of these elements on both sides, I should have despaired of the possibility of the passage of the two nations in safety through the difficulties presented to them from within, as well as from without.

But while I am prompt to respond to your lordship in the sense attributed to me, I pray permission to guard myself against an inference which might by possibility be drawn from a portion of your language prejudicial to my maintenance of the course which my Government has seen fit to take in regard to the events which have given rise to the present discussion. While doing the fullest justice to the intentions of Her Majesty's ministers, I feel equally bound to preclude the supposition that I have ever been satisfied with the measure in which, on too many occasions, they have contented themselves with carrying these intentions into practice. Inasmuch as the relations between nations, not less than between individuals, must depend upon the mode in which they fulfill their obligations toward each other rather than upon their motives, the questions which have grown out of the events of the late war appear to lose little of their gravity from any reciprocal disavowal, however complete, of ill-will on the part of the respective governments.

I am happy to concur with your lordship in the opinion that this appears to be a favorable moment for a calm and candid examination of these questions.

Were it not for this consideration I should abstain from further discussion, and content myself with simply transmitting to my Government the conclusion to which Her Majesty's ministers have arrived, as communicated to me toward the close of your lordship's note.

But entertaining as I do a strong impression that in the matter now at issue is involved a question of international comity, based upon grave principles of morals, of universal application, the decision upon which is likely to have a very wide bearing upon the future relations of all civilized nations, and especially those most frequenting the high seas, I feel myself under the necessity of placing upon record the views of it held by the Government which I have the honor to represent, at least to the extent to which the period of my service at this post has enabled me to do them but feeble justice.

In the note which I had the honor to address to your lordship on the 20th of May last, when recapitulating, in the form of propositions, the argument which made the basis of certain reclamations upon Her Majesty's government, I submitted, first of all, "that the act of recognition by Her Majesty's government of insurgents as belligerents on the high seas, before they had a single vessel afloat, was precipitate and unprecedented."

To this affirmation I understand your lordship now to reply by candidly admitting the truth of at least one-half of it. In pleading in justification that the insurrection which caused it was unprecedented, you certainly concede that the recognition was so likewise.

It may then be hereafter assumed, as a fact beyond dispute, that no

similar act was ever done by one nation toward another with which it was in amity.

With regard to the other term which I took the liberty to use, the the word "precipitate," I beg leave to call your lordship's attention to the ground upon which you proceed to justify the act of recognition. You are pleased to observe that it "followed and did not precede our own declaration of the intended blockade of six or seven considerable ports, and the declaration of an intention on the part of the confederates to issue letters of marque."

Now, I pray you particularly to note that, if this be the whole case made, your lordship has gone the length of conceding that Her
[33] Majesty's government actually adopted *this most grave proceeding without the evidence in its possession of any fact whatever upon which to rest it. The statement is simply that a declaration of intentions to act had been made by the respective parties preparing for a struggle.

Hence I feel constrained respectfully to submit it to your lordship whether in the history of civilized nations there can be found a single instance in which a step of such importance was ever taken by one friendly government in regard to another, upon a mere presumption of what was going to be done, an assumption of certain acts contemplated, but not performed. It would appear to be the part of calm statesmanship, in cases which cannot fail deeply to affect the interests of a friendly nation, to postpone acting at least until something shall have been actually done to require it. In this instance, there was no certainty, at the time when Her Majesty's government acted, that either of those declarations of intention would be fulfilled. The result proves that one of them, in point of fact, never was executed. Neither is it all beyond the possibility of belief that the other would have been equally left incomplete, but for this very action of Her Majesty's government, which precluded all chance of avoiding to have recourse to it. The actual blockade then, so far from being a cause, became actually an inevitable consequence of its policy. With the reluctance of my Government to resort to that measure, and the causes which overcame it, your lordship must have been too fully acquainted at the time to render it necessary for me to dwell upon this matter farther.

As a still stronger proof of the precipitate nature of that declaration, if any were needed, I pray permission only to refer to your published letter to Lord Lyons, written on the very day the announcement of the step taken by the government was made by yourself in the House of Commons, the 6th of May, 1861. In that letter your lordship freely admits that, by reason of the interruption of the communication between New York and Washington, you had not then any information of the precise measures actually taken down to that moment by either of the parties in the struggle "which appeared to have commenced."

Yet in spite of these circumstances, which deprived Her Majesty's government of all accurate knowledge of the facts, and notwithstanding that there was no apparent cause in any event that had occurred, urgently demanding an immediate decision, it was determined to adopt this step at this time; a step which, however intended, could not, just at the beginning of an undertaking to sap by violence the established authority of a friendly power, fail to have an influence injurious to the maintenance of that authority and favorable to its overthrow. Considering the nature of the friendly intentions which your lordship is pleased to take credit for, and in which I fully believe, the very best excuse

which I can imagine for this proceeding is that it was precipitate. I should be sorry to be led to the natural inference that would follow my admitting it to have been done with deliberate premeditation. I therefore must respectfully persist, notwithstanding your lordship's reluctance, in the opinion that I have not failed to give it the epithet which most fittingly belongs to it.

But your lordship in your note is pleased to justify this extraordinary "unprecedented and precipitate" step on another ground. This is the "magnitude" of the appearance of the insurrection. This certainly corresponds with my impression of the reasoning which you assigned to me in the first conversation which I had the honor to hold with you after my arrival in this country, the 18th of May, 1861. This view is now amplified in the form of the propositions Nos. 1 and 2 with which your lordship has now favored me:

"1. That the history of modern nations affords no example of an insurrection against a central government so widely extended, so immediate in its operation, so well and so long prepared, so soon and so completely furnished with the machinery of civil government, a national representation, generals and officers of high military reputation, armies fully equipped, and fortifications recently in possession of the established government.

"2. That intelligence reached Her Majesty's government, in the spring of 1861, that seven combined States had declared in favor of this insurrection; that three more States, including the great and powerful State of Virginia, were preparing to join them; that these States commanded upward of 3,000 miles of sea-coast; that they comprised more than 5,000,000 of people, exclusive of the negro slaves; that the president of the insurgent government had proclaimed his intention of issuing letters of marque and reprisal; that the President of the United States, on the other hand, had proclaimed his intention to establish a blockade of all the ports of the Southern States; and that in these circumstances the commander of Her Majesty's naval forces on the North American station earnestly solicited instructions for his guidance."

In respect to this, may I be permitted to beg your attention to the fact that, with perhaps the exception of the gross number of the
[34] people engaged, I do think myself able *to furnish an example of an insurrection in every particular corresponding to your description, which has occurred within the last century. I do not doubt that my allusion will at once be understood by your lordship without another word.

Yet, notwithstanding all the points of identity in that case, I cannot find that Her Majesty's government was met at the outset in 1774 with any announcement, by a foreign power in amity with Great Britain, of a necessity immediately to recognize the insurgents as a belligerent power, because of the magnitude of the struggle, or for any other cause. Neither is there the smallest ground for believing that it would have tolerated the proceeding for one moment, if it had been.

Her Majesty's government at once resorted without scruple or hesitation to every right ordinarily exercised by a belligerent in a war with a strong power, and was met with a degree of resistance more effective and enduring than any manifested in the late struggle. That resistance too was carried out on the ocean, where alone the interests of distant neutral states are liable to be seriously affected by the domestic strife of any nation, in a manner far more extensive than the late insurgents by their unaided efforts ever could have attempted. Yet a length

of time elapsed before any foreign power, however much inclined, ventured to find in this state of things any reason for considering the people waging such a war as a belligerent power. It furthermore is certain, that if at any time the smallest indication of a leaning that way manifested itself in any of the commercial powers, it was immediately noted by the British government for remonstrance and reclamation.

Your lordship has been pleased to review the conduct of France in this emergency; and to endeavor to set aside the parallel which I attempted in my note, on the ground that that country was animated by a policy decidedly hostile to Great Britain. The fact is doubtless so. But it so happens that this only bears with the more force in my favor on the present argument. Had France, being inclined to injure Great Britain, decided to recognize the insurgents as a belligerent, it would, according to the doctrine now avowed by Her Majesty's government, have been doing no more than was absolutely necessary and altogether justifiable. Why did it not take this step at once? Unhappily for the example, Great Britain at the outset insisted upon considering her as a friendly power, and called upon her solemnly to desist from any attempt whatever to recognize the presence of the insurgent force. In proof of this, I beg permission to quote a brief extract from a historical writer well known to have drawn his statements from official sources. Mr. Adolphus says that in April, 1775, that is, one year after the outbreak of the insurrection, "the friendly disposition of the French government toward Great Britain had been unequivocally demonstrated; and the expectation that succor would be afforded to the Americans was suppressed by an edict prohibiting all intercourse with them."

It thus appears that no idea was at that early period entertained by the British authorities of any unfriendly disposition on the part of France. So far from being inclined, as your lordship supposes it might have been, to give aid to the insurrection, which since 1774 had been developing its great proportions, by any recognition of it as a belligerent, the French sovereign frankly responded to an appeal made Great Britain, by interdicting his people from all relations whatever with the Americans. In other words, the example shows that, on both sides, there was not the remotest conception that a recognition of insurgents as a belligerent, immediately upon the breaking out of the insurrection, could be considered as a justifiable act on the part of a friendly power.

This brings me to the point at which I am compelled to question the soundness of the proposition upon which your lordship appears to proceed, to wit: that the action of foreign countries in reference to an insurrection that may take place against the established government of a friendly power is to be regulated by a consideration of the magnitude of the numbers that are engaged in the struggle. To my mind there is a difficulty in finding a foundation in sound principles for drawing such a distinction. If I may be permitted to express my own impression, it is that this action of foreign governments, if presumed to be really friendly, is rather to be based upon something like the same rule which they, whether representing large or small communities, would desire to be applied to themselves when in similar circumstances. The true criterion by which to be guided appears to be rather framed by patient observation of the probabilities of the issue. This can rarely be foreseen at the outset. It is not dependent on the mere accident of numbers. The force which lately overturned the government of Naples did not seem adequate to the object; yet it was accomplished nevertheless, and foreign nations consequently recognized the result.

On the other hand, the numerical force enlisted in the insurrection in

the United States seemed large, but time has shown that there never was a moment, while it lasted, that it had a chance of success against the resolute perseverance of a far stronger antagonist. For a foreign nation to have recognized in advance the handful of followers [35] *under the lead of General Garibaldi as a belligerent power would have been everywhere regarded as a violation of comity to the sovereign then ruling at Naples, and interfering to uphold an otherwise desperate undertaking. Yet the new kingdom of Italy was the offspring of this enterprise. On the other hand, the attempt in advance to assume the unlikelihood that the legitimate authorities in the United States would sustain themselves purely because of the magnitude of the forces levied against them, and to make this reason a basis for an "unprecedented and precipitate" act, investing them with the rights of a belligerent all over the world, has ended only in furnishing a historical precedent, against the authority of which I cannot but feel it to be for the peace and the harmony of civilized nations, for all later times, most earnestly to protest.

If I am correct in this view, then the conclusion which I find true international comity to prompt is this: Whenever an insurrection against the established government of a country takes place, the duty of governments under obligations to maintain peace and friendship with it appears to be at first to abstain carefully from any step that may have the smallest influence in affecting the result. Whenever facts occur of which it is necessary to take notice, either because they involve a necessity of protecting personal interests at home or avoiding an implication in the struggle, then it appears to be just and right to provide for the emergency by specific measures, precisely to the extent that may be required, but no farther. It is, then, facts alone, and not appearances or presumptions, that justify action. But even these are not to be dealt with farther than the occasion demands. A rigid neutrality in whatever may be done is of course understood. If after the lapse of a reasonable period there be little prospect of a termination of the struggle, especially if this be carried on upon the ocean, a recognition of the parties as belligerents appears to be justifiable; and at that time, so far as I can ascertain, such a step has never, in fact, been objected to. Lastly, when the evidence sustains a belief that the established government has utterly lost the power of control over the resistance made, without probability of recovery, it is competent for any friendly government to recognize the insurgent force as an independent power without giving it just cause of offense.

Such appears to me to have been the course rigidly adhered to by the Government which I have the honor to represent in the long struggle that took place between Spain and her colonies in South America. On which side of it the sympathies of the people were cannot admit of a doubt. Yet the respective dates which your lordship has been kind enough to search out and record in your note sufficiently establish the fact how carefully all precipitation was avoided in judging of the issue in regard to the mother country. I may, perhaps, be permitted to observe that the action of Her Majesty's government in the same cases furnishes even stronger precedents to confirm the soundness of my views. Its recognition of belligerency in these instances cannot be considered as suitably described by either term, "unprecedented" or "precipitate."

I have dwelt at some length upon this original point of difference between the two countries, because it has ever seemed to me the fruitful parent of all the subsequent difficulties, the nurse of a very large share of ill feeling which I cannot deny now to prevail among my countrymen.

How much stress has been laid upon it by my Government, and how ably Mr. Seward, to whom your lordship has kindly paid so grateful a compliment, has heretofore applied what you justly term "his remarkable powers of mind" to it, I am sure I need not remind you. In my note of the 20th of May I endeavored to arrange, in a logical sequence of distinct propositions, the effects which followed this as the first step, and which have led to the reclamations I have been constrained by my instructions to present. I do not propose at this time to dwell upon them further. I will only pray you to excuse the earnestness with which I venture to give expression to my views, under the plea of my belief that upon a correct decision in this controversy may depend the security which the commerce of belligerents will hereafter enjoy on the high seas against the hazard of being swept from them through the acts of nations professing to be neutral and bound to be friendly.

For if it be once fairly established as a principle of the international code, that a neutral power is the sole judge of the degree to which it has done its duty under a code of its own making, for the prevention of gross and flagrant outrages, initiated in its own ports by the agents of one belligerent in co-operation with numbers of its own subjects, and perpetrated upon the commerce of the other on the high seas; if it be conceded that the neutral, upon reclamation made for the injuries thus done by reason of the manifest inefficacy of its means of repression, which it has at all times the power to improve at will, can deliberately decline to respond to any such appeal, fall back upon the little that it has attempted as an excuse, and thenceforward claim, with justice, to be released from the inevitable consequences that must ensue from its inaction, then it must surely follow that the only competition be-
[36] tween neutral powers hereafter will be, not *which shall do the most, but which shall do the least to fulfill its obligations of interdiction of the industry and enterprise of its people in promoting the conflicts that take place between belligerents on the ocean. If this be once recognized as good law through the authority which the powerful influence of Her Majesty's government can attach to it, I dare not venture to foresee how much reluctance there may be on the part of the people whom I have the honor to represent to accept and act upon it. Hitherto a want of eagerness on the part of the most adventurous and least scrupulous portion of them to promote enterprise on behalf of any belligerent that promised personal advantage cannot be charged upon them. The references made by your lordship to the cases of Spain and Portugal must have convinced you of this truth. The prospect of impunity in such enterprises is all that is needed. Further than this, I might only venture to suggest to your lordship to consider which of the nations of the world presents on every sea around the globe the most tempting prizes, in an event no friend would more deplore than myself, of its being again, as it has so often been heretofore, doomed to be afflicted by the calamities of a war.

It does so happen, however, that no doctrine of this kind has yet been accepted as legitimate by the Government which I represent. On the contrary, it has ever assumed the painful and difficult task of responding to the just appeals of foreign friendly nations for protection against such enterprises. Whenever representations have been made by their agents, measures have been promptly taken to enforce the laws; and when the issue proved the inefficiency of the existing statutes, the duty of further legislation has been promptly recognized. This appears to me to constitute the full obligation of a neutral. Singularly enough, this course was taken in at least three instances, on the representations

made by authority of Her Majesty's government. I allude to the first law passed in 1794, in consequence of the complaints and at the special instance of Mr. Hammond, and to another in 1797. Your lordship appears to me but partially to state what was done when you dwell only on the compensation actually made for the cases in which there had been a failure to act. These laws were enacted to provide a better preventive process in all future cases, mainly for the protection of British commerce. The third example was the law of 1838, which was the remedy applied to excesses committed on the boundary of the British provinces in Canada by persons in the United States, whom the existing statutes were found not effective to restrain or punish.

Thus it was, too, in the case of Portugal, to which your lordship is pleased once more to call my attention. And here I must ask permission to re-state my view of the matter, which seems to have failed to be fully considered by your lordship. I certainly understood you to introduce the case into the correspondence as going to show this: that the Government of the United States had set a precedent of disavowing further responsibility in cases of reclamations for injuries committed on the high seas by outfits made, in despite of them, in their ports, against the commerce of Portugal, which the existing law had proved on trial ineffective to prevent or punish. This is the precise position which I understand Her Majesty's government to assume. Hence the value of the example as a personal argument in the present instance.

In opposition to this view it has been my purpose, by appealing to the facts in the case, to show that the Government had at once recognized the validity of the remonstrances of Portugal by first resorting to the laws already provided to meet the case by appeal to the courts, and next by promptly responding to the later demand of the same nation for more effectual modes of restraint than those which experience has shown to be ineffectual. To meet this demand a new law more particularly addressed to the object of prevention had been enacted, the efficacy of which proved so considerable as actually to elicit from the remonstrating party repeated expressions of his satisfaction with it. It does not appear that any further security was ever asked than this. The Government had done everything that could be reasonably required. It was therefore discharged from responsibility.

There were, indeed, subsequent cases of wrongful outfits and captures, of which your lordship has taken note. But in reply to the remonstrances that followed, the answer was prompt that they no longer raised questions that called for the interposition of the Executive department. Its whole duty had been performed. The true remedy was now open by an appeal to the courts. The language of Mr. Adams in his reply to M. Correa de Serra, a portion of which only I perceive has been introduced in your lordship's note, goes directly to this point. I pray permission to supply it in the following extract:

> The Government of the United States has neither countenanced nor permitted any violation of that neutrality by their citizens. They have, by various and successive acts of legislation, manifested their constant earnestness to fulfill their duties toward all the parties to that war; they have repressed every intended violation of
> [37] them which has been brought before their courts, and substantiated by testimony conformable to principles recognized by all tribunals of similar jurisdiction.

Your lordship in reading this passage could hardly have failed to feel the force of the successive affirmations of fact which form the grounds of the plea that all the obligations imposed upon a neutral power in such cases had been fulfilled.

The fact in the case was that M. Correa de Serra in his representations had begun to change his grounds of complaint, and direct his charges

against the administration of justice in the courts. This was a position obviously untenable. Much and sorely as I have felt at times the little chance that the United States has stood of receiving impartial justice in Her Majesty's courts, I have never received from my Government any instructions which did not fully recognize the impropriety of raising a question in regard to their decisions. This makes no part whatever of the grounds upon which I am instructed to make reclamations. The question has never been as to what the judicial tribunals have done or failed to do. It turns exclusively upon the duties of a neutral government to perform its obligations to a friendly power by a prompt and energetic policy of repression of flagrant wrongs through existing means, and, in the event of a failure of those means, by the adoption of others which it was entirely within its power to supply, if so disposed. The responsibility entailed upon Her Majesty's government in the present instance has always seemed to me to grow out of the feebleness of its measures of prevention at the outset, and its deliberate refusal to obtain an enlargement of its powers after existing remedies had proved unavailing.

With respect to that portion of your lordship's note which appears to defend the existing legislation as having really proved adequate, I beg leave only to remark that it is sufficiently answered by the fact that you proceed to specify in proof of it mainly those cases in which Her Majesty's government is admitted to have taken a responsibility of action beyond the law. While I have been always ready to bear testimony to the eminent utility of the action for which your lordship appears to have assumed a grave responsibility, I am at a loss to perceive how this diminishes the force of the reasoning which would seek from the legitimate protection of the law of the land that performance of obligations which appears now to depend only on the courage of the minister to transcend its limits.

And here I must pray permission to dwell a moment upon one passage of your lordship's note which has excited a strong sense of surprise, not to say astonishment. In order that I may by no possibility be guilty of any misconstruction of the meaning of the language, I take the liberty, with your permission, to transfer the very words. They are these:

> You say, indeed, that the Government of the United States altered the law at the urgent request of the Portuguese minister.
>
> But you forget that the law thus altered was the law of 1794, and that the law of 1818 then adopted was, in fact, so far as it was considered applicable to the circumstances and institutions of this country, the model of our foreign-enlistment act of 1819.
>
> Surely, then, it is not enough to say that your Government, at the request of Portugal, induced Congress to provide a new and more stringent law for the purpose of preventing depredations, if Great Britain has already such a law. Had the law of the United States of 1818 not been already in its main provisions adopted by our legislature, you might reasonably have asked us to make a new law; but surely we are not bound to go on making new laws *ad infinitum* because new occasions arise.

If I do not rightly comprehend the sense of your lordship, I pray to be corrected when I assume it to be that an argument drawn from the precedent of the course of my Government in enacting a new law to meet the remonstrance of the Portuguese minister has no force in supporting the representation I make in the present instance, because these very provisions of American legislation have been already long since substantially adopted by Great Britain in the enlistment act, the very act which is now complained of as ineffective. In other words, your lordship appears to take it for granted that Great Britain, having already passed a law as stringent and effective as that of the United

States, is therefore justified in declining any proposal to go on amending it.

If this be in verity your position, I must pray your pardon if I hazard the remark, in reply, that you cannot have given to the respective statutes in question the benefit of that careful collation which the occasion would seem to require. If you had done so you must have noticed that, in point of fact, they are materially unlike. The British law is, as your lordship states, a re-enactment of that of the United States, but it does not adopt all of "its main provisions," as you seem to suppose. Singularly enough, it entirely omits those very same sections which were originally enacted in 1817 as a temporary law on the complaint of the Portuguese minister, and were made permanent in that of
[38] 1818. It is in *these very sections that our experience has shown us to reside the best preventive force in the whole law. I do not doubt, as I had the honor to remark in my former note, that if they had been also incorporated into the British statute, a large portion of the undertakings of which my Government so justly complains would either have never been commenced, or, if commenced, would never have been executed. Surely it was not from any fault of the United States that these effective provisions of their own law failed to find a place in the corresponding legislation of Great Britain. But the occasion having arisen when the absence of some similar security was felt by my Government to be productive of the most injurious effects, I cannot but think that it was not so unreasonable as your lordship appears to assume, that it should hope to see a willingness in that of Great Britain to make the reciprocal legislation still more complete. In that hope it was destined to be utterly disappointed. Her Majesty's government decided not to act. Of that decision it is no part of my duty to complain. The responsibility for the injuries done to citizens of the United States by the subjects of a friendly nation, by reason of this refusal to respond, surely cannot be made to rest with them. It appears, therefore, necessarily to attach to the party making the refusal.

But if the example thus set by Her Majesty's government should come to be generally adopted, and the principles of neutrality upon which it rests be recognized as a part of the code of international law, then it is not difficult to foresee the probable consequence. A new era in the relations of neutrals to belligerents on the high seas will open. Neutral ports in that event will, before long, become the true centers from which the most effective and dangerous enterprises against the commerce of belligerents may be contrived, fitted out, and executed. The existing restrictions upon the exploits of daring adventurers will rapidly become obsolete, and no new ones will be adopted. Ships, men, and money will always be at hand for the service of any power sufficiently strong to hold forth a probability of repayment in any form, or adroit enough to secure a share of the popular sympathy in its undertakings. New Floridas, Alabamas, Shenandoahs, will appear on every sea. If such be the recognized law, I will not undertake to affirm that the country which I have the honor to represent would not in the end be as able to accommodate itself to the new circumstances as Great Britain. While I cannot but think that every moderate statesman would deprecate such a change, which could hardly fail to increase the hazard of lamentable complications among the great maritime powers, I cannot see an escape from it, if a nation itself possessing a marine so numerous and extensively dispersed decides to lead the way.

Entertaining these views, it appears scarcely necessary for me to follow your lordship further in the examination of details of former pre-

cedents either in English or American history. I am happily relieved from any such necessity by learning the conclusions to which Her Majesty's government have arrived. Understanding it to decline the proposal of arbitration, which I had the honor, under instructions, to present, in any form, for reasons assigned by your lordship, I nevertheless am happy to be informed that "Her Majesty's government are ready to consent to the appointment of a commission, to which shall be referred all claims arising during the late civil war which the two powers shall agree to refer to the commissioners."

I have taken measures to make known, at the earliest moment, this proposal to my Government, and shall ask permission to await the return of instructions before giving a reply.

Disclaiming all authority to express in advance any opinion on the part of my Government, I pray, at the same time, your lordship's attention to a single circumstance which, without a previous agreement upon the great principles of international law involved in this controversy, may raise a difficulty in the way of accepting the proposal. At a first glance it would appear as if it were, in substance, identically the same with that long ago made by the Portuguese government to that of the United States. The essence of the answer returned in that case happens to have lately passed under your eye, since it is found incorporated in your lordship's note. I trust I cannot be suspected of a desire to imply that, in taking this step, Her Majesty's government could have sought to appear either as proposing, on the one hand, a measure which it foresaw must be declined, or, on the other, one which, if accepted, could be so accepted only at the risk of a charge of disavowing the views of constitutional or international law entertained by my Government in former times. It may indeed be that, in this view, I may, after explanation, find that I have misconceived the nature of your lordship's proposal on the view which my Government will take of it, in which case I pray you to excuse the suggestion, and consider it as made without authority, and solely in the hope of eliciting such explanation.

I take great satisfaction in concluding this note by cordially re-
[39] sponding to your *lordship's request "to join with Her Majesty's government in rejoicing that the war has ended without any rupture between two nations, which ought to be connected by the closest bonds of amity."

I likewise receive with great pleasure your lordship's assurances that the efforts by which the Government and Congress of my country have shaken off slavery "have the warmest sympathies of the people of these kingdoms."

If, from painful observation in a service extended through four years, I cannot in candor yield my entire assent to this statement, as applied to a large and too influential portion of Her Majesty's subjects; if it has been my misfortune to observe in the process of so wonderful a revolution a degree of coldness and apathy prevailing in many quarters, from which my countrymen had every right to expect warm and earnest sympathy; if throughout this great trial, the severity of which, few not well versed in the nature of our institutions could fully comprehend, the voice of encouragement from this side of the water has too often emitted a doubtful sound, I yet indulge the hope that the result arrived at will ultimately correct the hasty and harsh judgments that flowed from lack of faith and of confidence in our fidelity to a righteous cause. Of the friendly disposition in this regard of the members of Her Majesty's government, and especially of your lordship, I have never permitted myself to doubt. And yet in the midst of the gravest of our

difficulties, I cannot forget that even your lordship was pleased, in an official published dispatch, to visit with the severity of your but too weighty censure the greatest political measure of the late lamented President, that which, in fact, opened the only practicable way to the final attainment of the glorious end. Under such circumstances, I pray you not to be surprised if I am compelled not to disguise the belief that with my Government, as among my countrymen at large, there is still left a strong sense of injured feeling, which only time and the hopes of a better understanding in future, held out by the conciliatory strain in your lordship's note, are likely to correct. Recognizing most fully the justice and propriety of the joint policy marked out in your concluding sentence,

I have, &c.,

(Signed) CHARLES FRANCIS ADAMS.

No. 6.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *October* 14, 1865.

SIR: I have thought it best to wait for the answer to the reference you have my made to your Government before replying to your last letter.

But I observe that you have not clearly understood my proposal for the appointment of a commission.

That proposal is made in the following terms:

Her Majesty's government are ready to consent to the appointment of a commission to which shall be referred all claims arising during the late civil war which the two powers shall agree to refer to the commissioners.

There are, I conceive, many claims upon which the two powers would agree that they were fair subjects of investigation before commissioners.

But I think you must perceive that if the United States Government were to propose to refer claims arising out of the captures made by the Alabama and Shenandoah to the commissioners, the answer of Her Majesty's government must be, in consistency with the whole argument I have maintained, in conformity with the views entertained by your Government in former times.

I should be obliged, in answer to such a proposal, to say, "For any acts of Her Majesty's subjects committed out of their jurisdiction, and beyond their control, the government of Her Majesty are not responsible."

I should say further, that the appointment of a commission for such purpose would not be consistent with any practice usual among civilized nations, and that it is a principle well known and well understood that no nation is responsible for the acts of its citizens committed without its jurisdiction, and out of the reach of its control.

I should have cleared up this point before, but I thought that the words "which the two powers shall agree to refer to the commissioners" would put an end to any doubt upon the subject.

I am, &c.,

(Signed) RUSSELL.

[40] *No. 7.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, October 17, 1865. (Received October 18.)

MY LORD: I have the honor to acknowledge the reception of your note of the 14th instant, explanatory of some portions of a preceding one, dated the 30th of August last.

This has reached me just in season to enable me to dispense with the necessity of soliciting precisely that information. For although the Government which I have the honor to represent had already understood your lordship's note as substantially in the same sense, it has instructed me to ask the confirmation of it which has now been supplied.

I am now directed to inform your lordship that the contents of your note of the 30th August have received the most careful consideration.

With regard to the reference which you were pleased to make to a friendly remark contained in the note which I had the honor to address to your lordship on the 23d of October, 1863, apparently considering it in the light of a formal proposal for arbitration, I am now desired, in view of the reasons given by your lordship why such a mode of adjustment would not be acceptable to Her Majesty's government, to state that, whatever may have heretofore been or might now be thought by the President of umpirage between the two powers, no proposition of that kind for the settlement of existing differences will henceforward be insisted upon or submitted on the part of my Government.

The proposal of some form of commission made by your lordship still remains under consideration. To the end that my Government may be the better enabled to make a satisfactory reply to it, I am still under the necessity of soliciting more information in regard to the precise nature of the claims which Her Majesty's government is disposed to agree to consider. I am instructed to venture so far as to ask the favor of your lordship to distinguish as well what among the classes of claims it is willing, and what it would not be willing, to refer to the proposed commission.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

No. 8.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *October* 19, 1865.

SIR: I have the honor to acknowledge the receipt of your letter of the 17th instant, requesting to be informed of the precise nature of the claims which Her Majesty's government would be willing to refer to a commission; and I have to state to you in reply, that the information you request may take some time in preparation; but Her Majesty's government will furnish it as soon as they can, consistently with the importance of the question.

I am, &c.
(Signed) RUSSELL.

No. 9.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, October 21, 1865. (Received October 23.)

MY LORD: Under instructions from my Government, I have the honor to submit to your consideration copies of certain papers, marked A, relative to the destruction of the whaling bark William C. Nye by the vessel known under the name of the Shenandoah.

I am further directed to state that, in view of the origin, equipment and manning of that vessel, my Government claims to look to that of Great Britain for indemnification for this and other losses that have been occasioned by her depredations.

In order that the facts attending this particular case may be more fully laid before you, I pray your lordship's attention to the series of papers marked B, herewith transmitted, which relate to a very material portion of this vessel's career.

In the statement of this case I shall endeavor to confine myself [41] to a recapitulation of *the principal facts. To this end it will be necessary for me to recall your attention to certain portions of the correspondence which I have heretofore had the honor to hold with your lordship.

In the letter which I was directed to address to your lordship on the 6th of September, 1864, when I was under the painful necessity of remonstrating against the conduct of the commander of the yacht Deerhound, in rescuing from the hands of the victor in the strife many of the crew of the Alabama, I received orders to submit to your consideration four propositions, two of which were in the following words:

3. That the continuance of these persons to receive from any British authorities or subjects pecuniary assistance or supplies, or the regular payment of wages, for the purpose of more effectually carrying on hostile operations from this kingdom as a base, is a grievance against which it is my duty to remonstrate, and for which to ask a remedy in their conviction and punishment.

4. The occasion has been thought to warrant a direction to me to ask with earnestness of Her Majesty's government that it should adopt such measures as may be effective to prevent the preparation, equipment, and outfit of any further naval expedition from British shores to make war against the United States.

To these propositions your lordship was pleased to reply on the 26th of September, by stating that the rescue of those people from the sea, and from their captors, was regarded by you as a praiseworthy act of humanity; and that after their escape into this kingdom as a refuge, any attempt to restore them could be viewed by you only as a violation of hospitality. No action whatever, so far as I have had an opportunity of knowing, has followed upon either of these requests.

On the 10th of November following, I took the liberty of calling your lordship's attention to the fact that these refugees, who had been enjoying the hospitality of a neutral kingdom, were in reality persons most of them British subjects, originally enlisted within this kingdom for an unlawful purpose, actually still engaged in the same business, and held together with a view of making part of another enterprise of the same sort with that of the Alabama, conceived and executed in all its parts by agents of the rebels residing all the time under the protection of Her Majesty's neutral territory at Liverpool.

The result, as displayed in the papers now submitted, shows conclusively that the "refuge" spoken of by your lordship has been turned into a den of robbers; and that the humanity so freely commended has in its

consequences been productive of wide-spread suffering to many industrious and innocent men.

On the 18th of November, 1864, I had the honor to transmit to your lordship certain evidence which went to show that, on the 8th of October preceding, a steamer had been dispatched under the British flag from London, called the Sea King, with a view to meet another steamer called the Laurel, likewise bearing that flag, dispatched from Liverpool on the 9th of the same month, at some point near the island of Madeira. These vessels were at the time of sailing equipped and manned by British subjects; yet they were sent out with arms, munitions of war, supplies, officers, and enlisted men, for the purpose of initiating a hostile enterprise to the people of the United States, with whom Great Britain was at the time under solemn obligations to preserve the peace.

It further appears that, on or about the 18th of the same month, these vessels met at the place agreed upon; and there the British commander of the Sea King made a formal transfer of the vessel to a person of whom he then declared to the crew his knowledge that he was about to embark on an expedition of the kind described. Thus knowing its nature, he nevertheless went on to urge these seamen, being British subjects, themselves to enlist as members of it.

It is also clear that a transfer then took place from the British steamer Laurel to the Sea King of the arms of every kind with which she was laden, for this same object, and, lastly, of a number of persons, some calling themselves officers, who had been brought from Liverpool expressly to take part in the enterprise. Of these last a considerable portion consisted of the very same persons, many of them British subjects, who had been rescued from the waves by British intervention at the moment when they had surrendered from the sinking Alabama, the previous history of which is but too well known to your lordship.

Thus equipped, fitted out, and manned from Great Britain, this successor to the destroyed corsair, now assuming the name of the Shenandoah, though in no other respect changing its British character, addressed itself at once to the work for which it had been destined. At no time in her later career has she ever reached a port of the country which her commander has pretended to represent. At no instant has she earned any national characteristic other than that with which she started from Great Britain. She has thus far roamed over the ocean receiving
[42] her sole protection against the consequences *of the most piratical acts, from the gift of a nominal title which Great Britain first bestowed upon her contrivers, and then recognized as legitimating their successful fraud.

I am not unmindful of the grounds which have been heretofore assigned by your lordship as releasing Her Majesty's government from responsibility for the flagrant conduct of this vessel. It is urged that there is no power to prevent vessels bearing the semblance of merchantships from leaving the ports of this kingdom, and meeting each other at some place on the ocean far beyond Her Majesty's jurisdiction, for the execution of a purpose like that now in question. The parties to it violate no law of the land, provided they commit no offense against the neutrality of the kingdom within its territorial limits. While I cannot myself quite appreciate the force of this reasoning, so far as it may be applied to absolve one nation from its international obligations with another, merely on account of the skill of its subjects in evading the local law, I am at the same time not disposed to underrate the difficulties which the best-intentioned government may, in performing its duty,

experience from that cause. Its will may certainly be sometimes baffled by the arts of desperate and profligate adventurers.

Did the merits of this case depend upon the mere fact of the escape of the vessel from a British port by eluding the vigilance of the authorities, it might, perhaps, be considered as not entailing upon Her Majesty's government so heavy a responsibility. There are other circumstances connected with that event which aggravate its nature. One of the most grave appears to be the fact that, after the escape had occurred and the nefarious project had been consummated, Her Majesty's government, nevertheless, instead of taking prompt measures to denounce the transaction thus completed in defiance of its authority, and refusing to give it the smallest countenance in any British port, deliberately proceeded to accept the result as legitimate, and to direct that this vessel so constituted should be from that moment entitled to all the privileges which an honest belligerent might claim or any vessel of the United States would enjoy.

The consequences of what I cannot but regard as this most unfortunate construction of international law, by which success in committing the fraud was made the only test to purge it of its offensive nature, have been manifested in the manner in which the Shenandoah was received wherever it went in the British dependencies. The supplies there obtained under one pretense and another, particularly in the remote ports of Australia, have enabled this vessel to keep the seas and to continue her depredations long after she has been stripped of the last shadow of the character with which Her Majesty's government voluntarily chose to invest her at the outset. It is impossible to read the papers which have been forwarded to my Government from the consul at Melbourne, copies of which are submitted with this note, without feeling that in no instance on record have similar concessions been made to a vessel of such a fraudulent origin, or such offensive partiality been manifested toward it by a portion of a nation professing to style itself neutral. In consenting to receive this vessel, after the facts of its illegal origin and outfit had been satisfactorily established, I cannot resist the conviction that Her Majesty's government assumed a responsibility for all the damage which it has done, and which, down to the latest accounts, it was still doing, to the peaceful commerce of the United States on the ocean.

I pray permission to call your lordship's attention to still another of the circumstances which appear to me among the most grave belonging to this case. This enterprise seems to have been the last of the series conceived, planned, and executed exclusively within the limits of this kingdom. It emanated from persons established here since the beginning of the war as agents of the rebel authorities, who have been more effectively employed in the direction and superintendence of hostile operations than if they had been situated in Richmond itself. In other words, so far as the naval branch of warfare is concerned, the real bureau was fixed at Liverpool and not in the United States. The vessels were constructed or purchased, the seamen enlisted, the armament obtained, the supplies of every kind procured, the cruises projected, and the officers and men regularly paid here. In other words, all the war made on the ocean has been made from England as the starting-point. I have had the honor to furnish, from time to time, to your lordship evidence of the most conclusive character touching most of these points, and I have even designated the chief individuals to whom the supreme direction of the operations had been intrusted. I fail to be able to recall in history a case of more flagrant and systematic abuse of the neu-

trality of a country by a belligerent, kept up for an equal length of time. But what I cannot but think still more remarkable is, that notwithstanding the fact of the frequent representations and remonstrances made by myself under the instructions of my Government, so far as I have been permitted to learn, not a single effort was ever made by Her Majesty's government either to prevent or to punish the persons known to be engaged in this most extraordinary violation of the law of the land.

[43] *Prosecutions have been instituted, indeed, against a few persons who were alleged to have been acting in contravention of the provisions of the enlistment act. Mr. Rumble, after escaping from justice by the leniency of a jury, received a decided censure from the government; Captain Corbett, the officer commanding the Sea King, though prosecuted, appears never to have been brought to trial. But these, and a few minor cases, were exclusively those of British subjects, who appear to have been acting merely as instruments of a power above their heads. Not a single individual directly connected with the rebellion, and sent here to conduct the operations, has ever been molested in any manner. It cannot, therefore, be at all a matter of surprise, when the mainspring of the various naval enterprises, the director of the Alabamas, Floridas, Georgias, and Shenandoahs, was left wholly undisturbed, that it has been impossible to put a stop to the damage which has ensued to the people of the United States from the ravage and depredation committed upon them by the operations carried on from this kingdom. At the very time when the fortunate encounter of the Alabama by the United States steamer Kearsarge terminated in the destruction of one of these corsairs, the offspring of the violated law of this land, and when the people of the United States were congratulating themselves that one great cause of irritation between the two countries was at last laid to rest, it now appears that the directing power to which I have alluded at once turned its attention to a husbanding of the seamen saved by a trick from the hands of the victor, with a view to the immediate production of a successor to the same work. The evidence which I now have the honor to submit shows that many of the crew saved from the Alabama have been from the beginning, and still continue to be, a part of the crew of the Shenandoah. Neither does it appear from anything within my knowledge that the smallest attention was ever paid by Her Majesty's government to the representations which I had the honor to submit at the time touching the probability of precisely such an operation.

That the principal person engaged in the direction of this bureau was an officer by the name of J. D. Bullock, expressly dispatched from Richmond for the purpose of organizing it, is a fact to which I had the honor to call your lordship's attention in many different forms during the progress of the struggle. Yet, in spite of all this evidence, Mr. Bullock appears to have been permitted to conduct his operations, and especially to shape the outfit and the entire cruise of the Shenandoah, without the smallest interference from any official quarter.

It may, however, be objected that whatever may have been the nature of my remonstrances, no sufficient evidence was presented of the official character and proceedings of Mr. Bullock to sustain the initiation of any prosecution against him in the courts. To which I am pained to be constrained to reply that my Government has reason to believe that Her Majesty's government has in one instance considered that evidence sufficient to sustain it in recognizing the authority of Mr. Bullock over the commander of the Shenandoah so far as to stop its career, and in consenting to furnish the medium by which to transmit his orders to

that vessel. The power to prevent certainly implies the previous existence of a power to control. I beg permission to express the hope that, inasmuch as the papers in which this fact appears have not come into the hands of my Government by direct communication from your lordship, I may presume them not to be genuine.

Should the fact be otherwise, however, while readily conceding that the motive for such a proceeding may have been substantially of the most friendly nature, in accelerating the termination of the ravage committed by that vessel, I do not at the same time feel at liberty longer to disguise from your lordship the sense of extreme surprise which the knowledge of it has caused, not less on account of the singular recognition thus incidentally made of the authority of one long since pointed out as the principal offender against the neutrality of this kingdom, and enjoying a degree of impunity difficult to be understood, than of the fact that Her Majesty's government appears to have determined thus to act without deigning any friendly signification of its purpose to the party most directly interested in the decision.

Since the preceding was written, I have had the honor to receive, unofficially, from your lordship the gratifying intelligence that Her Majesty's government have decided to send orders to detain the Shenandoah if she comes into any of Her Majesty's ports, and to capture her if she be found on the high seas. I have taken great pleasure in transmitting this to my Government. At the same time, I trust I may be pardoned if I am compelled to remark that, had Her Majesty's government felt it to be consistent with its views to adopt this course at the time when it adopted that upon which it has been my painful duty to animadvert, it would have most materially contributed to allay the irritation in my own country inseparable from the later outrages committed by that vessel.

[44] *Having thus acquitted myself of the unpleasant duty with which I have been charged,

I pray, &c.,

(Signed) CHARLES FRANCIS ADAMS.

[Inclosure 1 in No. 9.]

A.

Messrs. Merrill & Co. to Mr. Seward.

SAN FRANCISCO, *August* 16, 1865.

DEAR SIR: The English propeller Sea King, *alias* confederate steamer Shenandoah, has made her appearance in the Arctic Ocean, and threatens the destruction of the entire whaling fleet. Twenty-five whaling vessels have already been burned by her, and four others captured and bonded for the purpose of bringing the crews of the burnt ships to this port and the Sandwich Islands.

On the 26th of June she burned our bark, the Wm. C. Nye, of this port, sending her crew to this port in the whaler General Pike, and we wish to place on file or present for collection our claim against the English government for the destruction of the said vessel, amounting to $280,212.50. The size of the Wm. C. Nye, and the owners of her, are certified to by our deputy collector; and we forward with the claims the captain's "extended protest." Please inform me whether the claim should be presented in any different shape.

Allow me to suggest that the next Congress be recommended to appoint a "commission" to adjust these claims, while all the testimony that may be required can be obtained, and the various facts in the different cases are fresh.

We remain, &c.,

(Signed) J. C. MERRILL & CO.

The bark Wm. C. Nye was of the capacity of 389$\frac{35}{95}$ tons, as appears from copy of her register on file in this office, and she was owned as per statement hereunto attached.

In witness whereof I have hereunto set my hand and seal, at San Francisco, this 11th day of August, 1865.

(Signed) E. DANIELS,
Deputy Collector.

SAN FRANCISCO, *August* 7, 1865.

English propeller Sea King, *alias* Confederate States steamer Shenandoah, Dr. to J. C. Merrill & Co., owners and agents of American bark Wm. C. Nye.

Bark Wm. C. Nye, line-oak built, coppered, and copper-fastened, 389$\frac{35}{95}$ tons, burned in the Arctic Sea June 26, 1865	$35,000 00
Boats, casks, crafts, provisions, whaling-guns, bombs, and materials	20,000 00
150 barrels whale-oil on board, 4,725 gallons, at $1.50	7,089 50
Season's catch destroyed, estimated at 2,500 barrels whale-oil, 78,750 gallons, at $1.50	118,125 00
Whalebone, 50,000 pounds, at 82	100,000 00
	280,212 50

Owners:

J. C. Merrill & Co	7/16
P. H. Cootey	2/16
Moore & Co	2/16
Charles Hare	1/16
Tubbs & Co	1/16
William How	1/16
	16/16

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[45] * UNITED STATES OF AMERICA,

State of California, city and county of San Francisco, ss:

To all people whom these presents shall or may concern:

I, E. V. Joice, a public notary in and for the State and county aforesaid, by letters-patent under the great seal of the said State, duly commissioned and sworn, dwelling in the city of San Francisco, send greeting:

Know ye that on this 7th day of August, in the year of our Lord, 1865, before me, the said notary, at my office in the city of San Francisco, personally appeared S. H. Cootey, master of the bark Wm. C. Nye, belonging to the port of San Francisco, (the said master having personally noted in due form of law his intention to protest,) who, together with Fitch Way, second officer; John Sheridan, steward; and John Scanlan, carpenter, belonging to the aforesaid vessel, being by me duly sworn on the Holy Evangelists of Almighty God, voluntarily and solemnly did declare and depose as follows, to wit:

That they, the said appearers, on the 27th day of March, 1865, set sail and departed in and with the said vessel from the port of San Pedro, on a whaling cruise, and bound for the Arctic Ocean; the vessel being then stout, staunch, and strong; her cargo well and sufficiently stowed and secured, well masted, manned, tackled, victualled, apparelled, and appointed, and in every respect fit for sea and the voyage she was about to undertake. That on the 27th day of March we left San Pedro, bound for the Arctic Ocean on a whaling cruise, having on board about 150 barrels of oil, the catch of between seasons. Meeting with no incident worthy of note, on the 25th of May we made Cape Thaddeus, and were cruising for whale, when on the morning of the 26th of June, at 2 o'clock, the officer of the deck came down and reported what he thought to be a steamer close to us. Before the master could get on deck the steamer had hailed our bark to haul aback, which was done. The steamer lowered a boat and came alongside; an officer came on deck and said to Captain Cootey, "You must consider yourself a prize to the confederate man-of-war Shenandoah." She had no flag flying, and this was the first intimation we had of her character. The officer then inquired how many officers we had on board, and was informed four, when he ordered the captain and officers, with her papers, to get into his boat and go aboard the steamer. At this time the war-steamer was within 150 yards of the bark, and her guns were all visible, and the magnitude of her strength and ability to carry out his orders was

apparent. We got aboard the boat and were taken on board the Shenandoah, when an officer ordered the captain to go into the cabin, where he was met by Captain Waddell, in command of the Shenandoah, who inquired of the captain for his papers, which were handed over, and then given to the clerk. A bond or parole was then made out for the captain and officers to sign, but the precise character of the document is not known. However, upon this being done, and all the papers belonging to the ship, including her register, taken possession of by the clerk of the steamer, we were then informed by the commander of the steamer that he was done with us, when we were taken down into the between decks, and there searched by a person called master-at-arms, who treated us with every indignity he could invent; our pockets turned inside out, clothing rudely examined, and then ordered to sit down on the floor with some Chinamen. After remaining in this place about thirty minutes, we were ordered on deck and go aboard our bark to get a portion of our clothing. And while we were packing, the partitions were being knocked down preparatory to burning the vessel. In about fifteen minutes after going aboard, we were ordered to leave, when the bark was set on fire, and we were then put on our own whale-boats in tow of the steamer, when she started for two or three other whalers in sight to the northeast. After capturing and burning these vessels, as well as our own, we were, by order of the captain of the Shenandoah, put on board the bark General Pike, together with those belonging to captured whalers, which vessel was bonded to take us to San Francisco, were we arrived August 1, 1865. There were seven ships' companies put on board the Pike, of about 300 tons, all of whom suffered in consequence of the crowded condition of the ship and the want of accommodation for the voyage to San Francisco.

The bark Wm. C. Nye was well found and equipped in every respect for the voyage she had undertaken.

And the said appearers further declare that as all the damage and injury which already has or may hereafter appear to have happened or accrued to the said vessel, her freight and cargo, has been occasioned solely by the circumstances hereinbefore stated, and cannot be attributed to any insufficiency of said vessel, the neglect or default of him, this deponent, his officers or crew, he now requires me, the said notary, to make his protest and this public act thereof, that the same may serve and be
[46] of full force and *value as of right shall appertain. And thereupon the said master protested, and I, the said notary, at this special instance and request, did, as by these presents I do, publicly and solemnly protest against the winds, weather, and seas, and against all and every accident, matter, and thing had and met with as aforesaid, whereby or by means whereof the said vessel, her freight, or her cargo, already has or hereafter shall have suffered or sustained loss, damage, or injury, and for all losses, costs, charges, expenses, damages, and injury which the said vessel, or the owner or owners of the said vessel, or the owners, freighters, or shippers of her said cargo, or any other person or persons interested or concerned in either, already have been or may hereafter be called upon to pay, sustain, incur, or be put into by or on account of the premises, or for which the insurer or insurers of the said vessel, her freight or her cargo, is or are respectively liable to pay or make contributions or average according to custom, or their respective contracts or obligations, so that no part of any losses, damages, injuries, or expenses already incurred or hereafter to be incurred, do fall on him the said master, his officers, or crew.

Thus done and protested in San Francisco, this 7th day of August, in the year of our Lord 1865.

In testimony whereof, as well the said appearers as I, the notary, have subscribed these presents, and I also caused my seal of office to be hereunto affixed the day and year above written.

(Signed) E. V. JOICE,
Notary Public.

(Signed) S. H. COOTEY,
Master.
FITCH WAY.
Second Officer.
JOHN SHERIDAN,
Steward.
JOHN SCANLAN.
Carpenter.

STATE OF CALIFORNIA.
City and County of San Francisco, ss:

I, the undersigned, notary public, hereby certify the foregoing act of protest to be an accurate and faithful copy of the original on record in my book of official acts.

In testimonium veritas.

(Signed) E. V. JOICE,
Notary Public.

[Inclosure 2 in No. 9.]

B.

Mr. Blanchard to Mr. Seward.

CONSULATE OF THE UNITED STATES OF AMERICA,
Melbourne, February 23, 1865.

SIR: It is my painful duty to inform you that an armed steamship, flying the flag of the so-styled Confederate States, now called Shenandoah, but in reality the British vessel Sea King, entered this port on the 25th January, 1865, at about 8 o'clock p. m., and that said vessel was allowed to repair, to go upon a dry dock, to coal; and that she was allowed to depart at about 7 o'clock a. m., on the 18th February, 1865, notwithstanding my continued protest.

* * * * * * *

On the 25th January, the telegraph announced that a steamship, supposed to be the Royal Standard, from Liverpool, fifty-two days out, was in sight; late in the evening rumors were in circulation to the effect that the vessel seen was the confederate war-ship called Shenandoah.

On the morning of the 26th I learn from the papers that the confederate ship Shenandoah had anchored in the port about dark the day before.

On coming to the consulate on the morning of the 26th January, 1865, I found there the following named persons, all of the late American bark Delphine, burned at sea on the 26th of December, 1864, and all claiming to be prisoners of war to the confederate steamship Shenandoah, and on parole not to communicate anything to the detriment of the confederate cause or that would lead to the capture of said ship, viz., William Green Nichols, master; E. T. Jones, first mate; E. P. Nichols, second mate; E. T. Lingo, steward; William Scott, carpenter; Charles Hemming, Frederick Lendbug, and William Edstrom, seamen.

Being anxious to get a description of the vessel and her armament, to send off in the mail just then closing, I used every endeavor to procure it from the above per-
[47] sons, and at near 1 o'clock succeeded in getting enough information to enable me to send such description of said vessel to Mr. Adams, and also to our consul at Hong-Kong, with a view of having a cruiser put on her track as soon as possible, which dispatches I sent on board the mail-steamer then in the bay, the mail having closed at Melbourne, a copy of which is herewith inclosed, (No. 3.)

While I was taking Captain Nichols's testimony, which is inclosed, (No. 4.) I received a dispatch from the commission of trade and customs at 3.30 p. m., informing me that an application had been made to land certain prisoners from the confederate steamer Shenandoah, and wanting to know, for the information of the governor, whether I, as consul for the United States, would take care of and provide for them if landed. A copy of the dispatch is herewith inclosed, (No. 5.)

The November mail from Europe, which arrived here about the middle of January, brought the news that the Sea King and the Shenandoah were one and the same ship, and that she had not entered any port since leaving England. I took the position toward the authorities here that she was not entitled to the rights of a belligerent as contemplated in Her Majesty's neutrality proclamation, and that she could not change her nationality at sea.

I therefore, in answer to the dispatch of the commissioner of trade and customs, sent an answer direct to Sir Charles Darling, the governor, then at the government house, Toorak, about five miles off, a copy of which (No. 6) is herewith inclosed, and which was delivered and receipted for at 6.45 p. m. same day.

On the 27th January I continued the examination of the men from the Delphine, several of whom told me that all the captured men who had been induced to join said vessel had done so either after imprisonment and punishment or to avoid it through threats, and that they believe they would all leave if I would protect them from arrest. I informed the men that I would protect all persons that had shipped under such circumstances from captured American vessels, and directed such men, if any such were seen ashore by them to inform them of my determination, and direct to me or come with them. I did this with the view of liberating the men, of reducing her crew, which was mostly made up of such impressed men, and of obtaining information that the men I then had would not give on account of their parole.

I also sent to the governor an argumentative dispatch, again protesting against said Sea King-Shenandoah, and maintaining that said vessel was in violation of Her Majesty's proclamation, a copy of which is herewith inclosed, (No. 7.)

On the 28th I received a dispatch from C. J. Tyler for private secretary, informing me that my dispatches of 26th and 27th January had been referred by the governor to his legal advisers, and that his excellency the governor would acquaint me with his decision, after he had received the advice of the attorney-general, a copy of which is herewith inclosed, (No. 8.)

After receiving the above, I forwarded to the governor a dispatch of same date, stating that evidence was daily accumulating in my office in support of the several protests I had sent him, and calling his attention to special reasons why said vessel should not receive the treatment of a belligerent, and protesting against the aid and comfort and refuge now being extended to said vessel, a copy of which is herewith inclosed, (No. 9.)

Being under the impression that the governor of New South Wales was still governor-general of all the Australian colonies, I sent to Mr. Leavenworth, our consul at Sydney, a dispatch, a copy of which (No. 10) is herewith inclosed, inclosing therein copies of the correspondence with the authorities here, and urging him, if my impressions in regard to the governor-generalship were correct, to lodge protests in support of mine with the governor-general there. I find I was mistaken; the governors are independent of each other.

On the 30th January I received a dispatch, dated private secretary's office, 30th January, informing me that his excellency the governor-general had received my communication of 26th, 27th, and 28th January, and advised with the Crown law-officers thereon, and that his excellency the governor has come to the decision that, whatever may be the previous history of the Shenandoah, "the government of this colony is bound to treat her as a ship of war, belonging to a belligerent power," a copy of which is herewith inclosed, (No. 11.)

I immediately entered a protest, in the name of the United States, against the decision of the government of Victoria, a copy of which is herewith inclosed, (No. 12.)

After receiving this decision of the governor, thus closing all arguments and hopes as to the vessel being stopped in her career by the governor, I consulted with
[48] several *American merchants here, and decided to indict her in the admiralty court. With this view I employed Messrs. Duffett, Grant, and Wolcott, solicitors, who became acquainted with sundry affidavits and witnesses at my command.

On the 1st February a debate arose in the colonial legislature respecting the Sea King, (Shenandoah,) in which the chief secretary seemed to think there was no proof of said vessel being the Sea King.

My solicitors considered there was abundant evidence, and that it should be laid before the Crown law-officers, which I authorized them to do. I therefore accompanied Mr. Duffett, of the said firm, to the Crown law-officers, where he left the affidavits of Messrs. L. L. Nichols, (No. 13;) William Bruce, (No. 14;) and John H. Colly, (No. 15.) The minister of justice and the attorney-general were absent, and the above affidavits were left with the chief clerk, Mr. Chromley.

On the 3d February Mr. Duffett, of the above, wrote to the attorney-general, as per inclosure No. 16.

On the 4th February I was informed, as per inclosures Nos. 17 and 18, that on Monday, February 6th, the law-officers would be glad to see me in relation to said vessel. At the appointed time, in company with Mr. Duffett, and supported by Mr. J. B. Swasey, a loyal American merchant of this city, I repaired to the officers named, when the case of the Sea King (Shenandoah) was discussed with the minister of justice and the attorney-general. During the interview I requested Mr. Duffett to read the affidavit of George Silvester, late a seaman on the Laurel, and fireman on the Sea King, (Shenandoah,) (No. 19;) and Mr. Duffett left the attorney-general the affidavits of Edward S. Jones, (No. 20,) James Ford, (No. 21,) George R. Brackett, (No. 22,) Charles Bollen, (No. 23,) John Sandall, (No. 24,) William Scott, (No. 25,) Frederick Lindborg, (No. 26,) and he withdrew the declaration of William L. L. Nichols, (No. 13,) left on the 2d February, and substituted for it an affidavit of the same person, (No. 27.)

After much discussion, both these gentlemen seemed to admit that the Sea King (Shenandoah) would be liable to seizure and condemnation if found in British waters; but would not admit that she was liable to seizure here, unless she violated the neutrality proclamation while in this port, and if she did they would take immediate action against her.*

Finding that I could not proceed in the admiralty court, I continued to take what evidence I could get, and forwarded it to the governor, and in the month of February I addressed to him a dispatch, in which I sent a list of the affidavits left at the Crown law-officers, a copy of which (No. 28) is herewith inclosed.

On the 10th February, 1865, I sent to the governor a dispatch inclosing the affidavit of John Williams, showing that persons were concealed on board said vessel, and others on duty on board, and wearing the uniform, which persons had come in said vessel in this port, a copy of which is herewith inclosed, (No. 29.)

On the 11th February I received a dispatch from the Crown law-officers, informing me that said John Williams may attend on Monday, the 13th, at the Crown solicitor's office, a copy of which is herewith inclosed, (No. 31.)

On Monday, the 13th, I induced Mr. Samuel P. Lord, a loyal American merchant here, to accompany said John Williams and Walter J. Madden, who had given like testimony before me, to the Crown solicitor, to see that the testimony of said persons was properly taken. Just after his departure from the consulate with the above-named

witnesses, two other sailors, named F. C. Bebrucke and Hermann Wicke, who said they left the Shenandoah only the day before, came to the consulate and gave substantially the same evidence. I immediately sent them with my clerk, Mr. Gage, to the Crown solicitor's office, to support the charge of those already there.

I then sent to the governor a dispatch, inclosing the testimony of John Williams, (No. 32,) Walter J. Madden, (No. 33,) and Thomas Jackson, (No. 34,) a seaman on board the Laurel, and fireman on board the Sea King, (Shenandoah,) in support of my protests, a copy of which is herewith inclosed, (No. 35.)

At about 5 o'clock p. m. on the 13th, an officer of the police, accompanied by the clerk from the Crown law-office, came to this consulate to obtain a witness to go on board the said Shenandoah to identify the persons who had shipped in this port on board said vessel. I declined to let any of them go on board said vessel, unless he would return them to this consulate, as I apprehended they might be seized as deserters, informing him that they were all impressed from American vessels. He gave me such a promise, and selected Walter J. Madden, who left this consulate in his charge.

On the 14th I received a dispatch from the governor's private secretary
[49] informing *me that my dispatches of the 10th and 13th were received, and had engaged, and continued to engage, the earnest attention of the colonial government, a copy of which dispatch is herewith inclosed, (No. 36.)

On the same day I sent a dispatch to the governor, (No. 37,) inclosing the affidavits of F. C. Bebrucke (No. 39) and Hermann Wicke, (No. 38,) these being the two men whom I had sent the day before to the Crown solicitors, and whose affidavits I took after their return.

On the 14th February, Walter J. Madden returned and informed me that the police were not allowed to search the ship the day before, and that two policemen went on board this morning, and returned without making any arrest; and that he was dismissed for the present. He also informed me that the Shenandoah was then on the patent slip, undergoing repairs.

On the evening of the 14th the town was full of rumors about the seizure of said vessel. About 5 o'clock I proceeded to Sandridge to ascertain if such seizure was made. Sandridge is opposite Williamstown, where the said vessel was, and in direct communication by steam ferry-boat, and distant about three miles. While at Sandridge I was informed by a master of an English ship, who was boarded by the Shenandoah previous to her arrival here, and whose name I do not remember, that he was on board the Shenandoah an hour previous, drinking with the ward-room officers, when Captain Waddell came in with a printed paper in his hand and informed them that the ship had been seized. That he left, coming through the police then around said vessel, by giving his name and occupation.

On the morning of the 15th February, it was reported in the papers that the Shenandoah had been seized by the authorities; that four persons endeavoring to escape from said vessel were arrested; among them was one Charley, who had been named by all the witnesses as being on board and wearing the uniform of said vessel.

With a view of getting the governor to reconsider his decision as alluded to, (No. 11,) and in answer to the argument used by the Crown law-officers at the interview I had with them before referred to, I forwarded to his excellency a dispatch, a copy of which is herewith inclosed, (No. 40.)

I received the same day a notice from the police department informing me of the arrest of four men, and desiring the presence of some person to identify them, a copy of which is inclosed, (No. 41.)

I sent the four men who had given the information to identify the arrested men, who returned same day, stating that Charley was among them, and that the others were also some of the persons referred to in their affidavits as being on board, and that their names were remembered when seen. These men also informed me that the prisoners were remanded, and that they were to appear the next day against them at the Williamstown police court. A few hours after I heard that the ship was released.

In the evening, during the session of parliament, the chief secretary announced that the government had issued no warrant, and that there had been no search; "that a warrant had been only issued for the arrest of one of their subjects, and that being satisfied, they ought not to proceed to extremities in this matter." Permission was then given to the workmen to launch the ship, which had been forbidden.

On the 16th February I had the men to attend at the police court, in Williamstown, as required, as witnesses. Two of the prisoners were committed, one released on the ground that he was not a British subject, and the other remanded till next day.

While crossing the bay to the trial at Williamstown, on the 16th, I saw the Shenandoah taking in coal from a ship alongside; and Mr. McFarlane, emigration officer, a fellow-passenger, informed me that she was taking in 200 tons of Scotch coal, in addition to the amount she brought here.

On the 17th February I forwarded to the governor a dispatch, calling his attention to the fact that the Shenandoah was a full-rigged sailing-vessel, steam being only auxiliary, and to the amount of coal she had upon her arrival here, and the quantity I

learned she was taking on board in this port, a copy of which (No. 42) is herewith inclosed. The same day I learned that the remanded prisoner was also committed, and the four men held as witnesses to appear at the March term of the court.

On the 17th I forwarded a dispatch to the governor, calling his attention to the affidavits heretofore forwarded him, showing that some ten or twenty persons had been shipped on board said vessel while in this harbor; also notifying him that I had forwarded to the attorney-general the solemn declaration of Michael Cashmore, (No. 43,) a highly respectable citizen, to the same purport; and that I had also left with the attorney-general a solemn declaration of J. B. Lydserff (No. 44) in relation to the sale of prize chronometers in this port by the officers of said vessel, and protesting
[750] against the vessel being allowed to leave this port with said persons on board. a copy of which (No. 45) is herewith inclosed.

On the evening of the 17th of February, Andrew Forbes came to the consulate with the information that several persons were then on the wharf ready to go on board a vessel to join the Sea King (Shenandoah) beyond the jurisdiction of this port; that one of said persons, named James Evans, had told him. Deeming the information important, and that no time was to be lost, I, in company with Mr. S. P. Lord, who was then in the consulate, took said Forbes with us to the Crown law-officers to lodge the information, and was met by the Crown solicitor coming out. Upon my application to take the information, he, in an offensive manner, positively declined, saying he wanted his dinner; that there were plenty of magistrates in town; that it was none of his business. He informed me that the attorney-general and minister of justice were in parliament, then in session. I then proceeded to the detective-police office, and there was informed that if the affidavit of the man was taken before a county magistrate they would execute his warrant. I then went to Parliament House, and called out Mr. Higgenbotham, the attorney-general, who said that if I would go to Mr. Sturt he would take the affidavit. I then went with the witness to Mr. Sturt, more than a mile off, who declined to take it, and said the water-police were the proper authorities to act. The water-police are at Williamstown, across the bay, and about four miles from Mr. Sturt's. I then took the testimony, which is No. 46, at my office, and dispatched it by Mr. Lord to the attorney-general, and started with the witness to Williamstown; when the witness found he had to go among his acquaintances he was afraid of bodily harm, and refused to proceed.

During the night several persons endeavored to find me to give information of the shipment of men for said vessel. One Robbins, a master stevedore, found me at 11 o'clock p. m., and informed me that boat-loads of men, with their luggage, were leaving the wharf at Sandridge, and going directly on board said vessel, and that the ordinary police-boats were not to be seen in the bay. I informed said Robbins that Mr. Sturt, police magistrate, told me the water-police were the proper persons to lodge any information with, and that he, as a good subject, was bound to inform them of any violation of law that came under his notice, which he promised to do.

On the morning of the 18th of February, at about 7 o'clock a. m., the said Shenandoah left her anchorage and proceeded to sea unmolested.

I forwarded to the governor the affidavit of said Forbes, (No. 46,) inclosed in a dispatch, a copy of which is annexed, (No. 47.)

On this day I received a reply from the private secretary, dated the 17th February, relating to the supply of coal, a copy of which (No. 48) is herewith inclosed.

I learned that the Shenandoah was inquiring for a pilot acquainted with the Australian waters, and I dispatched to the vice-consul at Hobart Town information to that effect, a copy of which is herewith inclosed, (No. 49.)

On the 18th of February the aforesaid Mr. Robbins called at the consulate, and informed me that six boat-loads of men left the wharves with their luggage during the previous night, and that they were taken on board through the propeller's hoist-hole. When asked to give his affidavit, he said, as the officials would take no notice, he would only injure his business by doing so, and he declined. He stated that about seventy men went on board of said vessel on the night of the 17th February, and that some of them took and used his boat to go in.

Captain Sears, of the American bark Mustang, was on the wharf watching, who informs me that he saw several boat-loads of men with luggage go to said vessel while lying in the bay, and that he also saw Robbins go to the police.

On the 20th I received a dispatch from the private secretary of the governor, dated same day, in answer to my dispatch of the 15th February, a copy of which (No. 50) is herewith inclosed.

On the 20th I requested, in writing, Mr. S. P. Lord to give me an account of my interview with the Crown solicitor referred to above. I inclose herewith a copy of said request, (No. 51,) as well as his answer thereto, (No. 52.)

On the 22d I received a dispatch from the private secretary's office, dated 21st February, in reply to my complaint of the 18th February, alluded to above, a copy of which is herewith inclosed, (No. 53.)

In recapitulating the above, I leave the documents to speak for themselves, convinced that they will meet with the interpretation they deserve. It will be for you to

consider whether the Sea King (Shenandoah) was heartily and illegally recognized as a war-vessel of a belligerent power, (coming, as she did, armed, from one British port to another, with the marks of her identity still upon her,) and allowed to depart again to renew her depredations on the commerce of a power friendly to Great Britain.

[51] It will be for you to consider whether the shipment of arms and ammunition in Liverpool on board the Laurel, to be put on board the Sea King, on the high seas, as borne out by the affidavits of Silvester and Jackson, is in accordance with international law and treaty obligations, and Her Majesty's neutrality proclamation.

The Department will not fail to perceive that with the sworn testimony of four persons before the authorities here to the effect that some ten or twenty persons were shipped in this harbor on board said vessel, and were rationed from her stores, and a part of them at least on duty on board in uniform, said vessel was nevertheless allowed to depart.

The attention of the Department is especially called to the interview alluded to above at page 9 with the Crown law-officers, to the effect that if the said ship was found violating the neutrality proclamation in this port they would take immediate action against her.

A dispatch from the Crown law-officers above referred to (No. 31) alludes to supporting a charge against certain persons and officers of the Shenandoah. The police examinations took place as stated, on the 16th and 17th February instant, at which time men were committed for trial; and yet at the very time these commitments were being made, the officers who thus violated the neutrality of this port were on board the ship within a mile of the said court, unmolested, and the ship was allowed to take in the additional quantity of coal mentioned hereinbefore. A printed report of the investigations of the persons referred to, cut from the Melbourne Argus, is herewith inclosed, (No. 54.)

These commitments do not seem to have stimulated the authorities to vigilance in regard to the said ship; otherwise, boat-loads of men could not have joined her on the night of the 17th and 18th instant, as stated above, and confirmed by the extracts taken from the three Melbourne daily papers of the 20th instant, herewith inclosed, and numbered 55.

What motives may have prompted the authorities, with evidence in their possession as to the shipment of large numbers of persons on board said vessel, substantiated by the capture and commitment of some escaping from said ship, to allow the said vessel to continue to enjoy the privileges of neutrality in coaling, provisioning, and departing with the affidavits and information lodged and not fully satisfied, I am at a loss to conceive. Was it not shown and proved that the neutrality was violated? And yet she was allowed her own way unmolested, thus enabling her to renew her violations of neutrality on a larger scale.

There are eyes that do not see and ears that do not hear, and I fear that this port is endowed with such a proportion of them as may be required to suit the occasion. For in what other way can my unsuccessful attempts to obtain the assistance of the authorities on the evening of the 17th instant be explained?

The immunities I enjoyed on this occasion as United States consul were of a peculiar nature; instead of being assisted by the authorities I was only baffled and taught how certain proceedings could not be instituted.

I find by this mail a file of the Melbourne Argus, Age, and Herald, the three daily papers of this city, during the time of the stay of the Shenandoah in this port, a careful examination of which will be necessary to obtain a complete view of what transpired in this place in relation to said ship and her officers. I also send the Melbourne pictorial papers, giving a picture of said vessel and some of the scenes on board of her.

I herewith inclose (No. 62) extracts cut from said papers in support of some of my statements, which I deem essential to be read in connection with this dispatch, for fear the papers sent by mail may not arrive in time, among which will be found the correspondence between the officials here with the officers of said vessel.

I also forwarded to the governor of the colony affidavits of Edward P. Nichols, second mate of late bark Delphine, (No. 59;) of E. T. Lingo, steward on board late bark Delphine, (No. 60;) and of Mary Lingo, (No. 61,) stewardess on late bark Delphine.

I close by informing the Department that James Francis Maguire, late United States consul here, as far as I could see and learn, acted as consul for the vessel and her officers.

I have, &c.,
(Signed) WM. BLANCHARD.

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[52] [Inclosure 3 in No. 9.]

Mr. Blanchard to Mr. Adams.

MELBOURNE, *January* 26, 1865.

SIR: The mail to Europe being about to leave, I hasten to inform you that a confed-

erate steamer named Shenandoah has made her appearance in this port this morning. I beg to inclose extracts of papers.

Some prisoners on board who are now being liberated give the following details respecting her:

She was the original Sea King, sailed from London on the 8th October, 1864, and received ammunition from a ship named Laurel, at sea. Part of the name Sea King is still visible, and I shall obtain of these particular letters a photograph. She is represented to have been built at Glasgow, and water-buckets, spoons, forks, &c., are marked Sea King. She is a wooden ship with iron frame, but not plated. Her armament is eight guns, viz, 8-inch shell guns, two on each side, unrifled, weight about 2 tons 15 cwt., guns bear number 11522, 11524, 11525; these guns are not breech-loaders; two rifled guns, about 5-inch bore, one on each side; two ordinary 12-pounders, the original ship's guns.

She has the appearance of an ordinary merchant-ship, with long full poop, a large bright wheel-house, oval skylights on the poop. She has one telescope funnel. The mizzen topmast and topgallant staysail both hoist from the mainmast head. She is wire-rigged.

The officers declare it would not be safe to fire a broadside. It is the general impression that she is not a formidable vessel. She is leaky, and requires two hours pumping out. The crew consists of 79 all told.

I have, &c.,

WM. BLANCHARD.

[Copy of the above also sent to the United States consul at Hong-Kong.]

[Inclosure 4 in No. 9.]

Protest of William Green Nichols.

I, the undersigned, William Green Nichols, of Searsport, United States, formerly captain of the bark Delphine, of Bangor, Maine, United States, do hereby solemnly declare on oath:

That said bark was of 705 tons register.

That on the 12th October, 1864, she sailed from Gravesend, England, under my command, with a crew of fifteen, and two passengers, (wife and child.)

That said bark was bound for Akyab, with a cargo of machinery, and that until the 29th December, 1864, nothing unusual occurred.

That on said 29th December last, latitude south 39° 20', longitude east 69°, I was fallen in with by a ship showing English colors for about half an hour while approaching. I showed American colors in reply. The ship on approaching proved to be a steamer with a telescope funnel, under sail; she fired a blank shot, upon which I immediately hove-to, she hoisting the confederate flag after firing the gun.

That immediately after the gun was fired the confederate flag was hoisted on said steamer, and on my ship, Delphine, being boarded, I was taken with my mate and ship's papers on board said steamer called Shenandoah.

That on examining said papers, the captain of aforesaid steamer, James J. Waddell, declared the ship under my command as a prize, granted me permission to remove the wardrobe of myself and family, (consisting of wife and child,) but allowed me to take nothing else.

That the crew were allowed the same privileges, with the exception of their beds.

That I, my wife and child, were taken on board said steamer as prisoners, but paroled, whereas such part of crew as would not join the steamer were put in irons.

That above-named ship Delphine was then ransacked and set on fire by crew of said steamer.

That I declared to the captain of said steamer the value of ship Delphine as being about £3,500 sterling.

That outfit, loss of freight, and wages, which amount to about £3,000, were not included in above amount.

[53] That immediately on being taken on board I was paroled, and on 23d instant a new parole was demanded from me in order to enable me to be released on reaching land.

That to-day, the 26th January, 1865, I was released in Hobson's Bay, under parole, which enjoins upon me not to give any information which might tend to the injury of said steamer, or to the detriment of the so-called confederate cause.

That not for want of loyalty to the United States, but in consequence of wishing not to violate said parole, I decline divulging anything as to her armament, &c.

That the knives, forks, spoons, &c., in use of the said steamer bore the mark Sea King, and I heard the captain say that she was formerly the Sea King; that he with

officers took charge of her at Madeira, or the Isle of Deserta, and sailed with an original crew of seventeen men.

(Signed) WM. G. NICHOLS,
Late Master Bark Delphine, Bangor.

MELBOURNE, *January* 26, 1865.

Subscribed and sworn to before me this 26th day of January, 1865.

(Signed) WM. BLANCHARD,
Consul.

When making the statement to the value of the ship, I thought that on account of having British property on board he might bond the ship and let her go, and I wished to have the bond as small as possible, not that I consider the amount above the value of the ship, neither do I include my private property on board, nor the property of the officers and crew.

(Signed) WM. G. NICHOLS,
Late Master Delphine.

(Signed) WM. BLANCHARD,
United States Consul.

[Inclosure 5 in No. 9.]

Mr. Francis to Mr. Blanchard.

CUSTOM-HOUSE,
Melbourne, January 25, 1865.

SIR: I am desired by his excellency the governor to inform you that an application has been made to land certain prisoners from the confederate steamer Shenandoah, now in this port, and I am to request that you will be good enough to inform me, for the information of Sir Charles Darling, whether you are willing to undertake to receive and provide for, on behalf of the Government which you represent, the prisoners above referred to.

I am to request the favor of an early reply to this communication.

I have, &c,

(Signed) JAS. G. FRANCIS,
Commissioner of Trade and Customs.

[Inclosure 6 in No. 9.]

Mr. Blanchard to Governor Sir C. Darling.

CONSULATE OF THE UNITED STATES OF AMERICA,
Melbourne, January 26, 1865.

SIR: I have the honor to acknowledge the receipt of a dispatch from the honorable the commissioner of trade and customs, dated to-day, and in reply beg leave to acquaint your excellency, that previous to it reaching me, at half past 3 o'clock p. m., I had made provision for the master, crew, and passengers already landed, of the United States bark Delphine, (the persons presumed to be referred to in said dispatch,) burnt at sea by a piratical vessel called the Shenandoah, ex-Sea King.

I avail myself of this opportunity to call upon your excellency to cause the said Shenandoah, *alias* Sea King, to be seized for piratical acts, she not coming within Her Majesty's neutrality proclamation, never having entered a port of the so-styled Confederate States of America, for the purpose of naturalization, and consequently not entitled to belligerent rights.

[54] *The table-service, plate, &c., on board said vessel, bears the marks Sea King, and the captain should bring evidence to entitle him to belligerent rights.

I therefore protest against aid or comfort being extended to said piratical vessel in any of the ports of this colony.

I have, &c.,

(Signed) WM. BLANCHARD.

[Inclosure 7 in No. 9.]

Mr. Blanchard to Governor Sir C. Darling.

CONSULATE OF THE UNITED STATES OF AMERICA,
Melbourne, January 27, 1865.

SIR: The undersigned consul of the United States of America, at the port of Melbourne, begs most respectfully to call the attention of your excellency to the armed cruiser (referred to in his note of yesterday) now at anchor in Hobson's Bay, and reported to be a vessel of the (so-styled) Confederate States of America.

It must be evident to your excellency that notoriously all the presumption of fact and law are against the probabilities of the legal character of the vessel in question, and it is not necessary for the undersigned to more than suggest to your excellency the ease with which any lawless rover of the seas may assume any character designed to effect his purposes.

When in this case the actual circumstances are duly considered, having reference on the one hand to the present condition of the so-styled Confederate States of America, and on the other to the frequent violations in Her Majesty's ports of the laws of neutrality, especially of the well-known facts proclaimed respecting this very vessel before her arrival; there would scarcely seem to remain a doubt as to her real character here, for the first time appearing in her new pretended nationality, coming from nowhere, bringing in no prizes, destroying without adjudication and without necessity all property seized regardless of ownership, leaving inhumanly, and against the law of nations, large numbers of captives upon a desert island, having in all parts of her, and in the remains of half-erased letters, numberless *indicia* of her genuine nationality, the undersigned will not doubt that not only in the interest of justice and the safety of universal commerce upon the seas, but also in vindication of the honor and dignity of Her Majesty's government (too long contemptuously disregarded by those who, seeking asylum under it, only abuse an honorable hospitality to violate its laws and insult its sovereignty,) your excellency will give so much weight and no more to a "bit of bunting," and "a shred of gold lace," as they deserve; that your excellency will well assure yourself that those presumptuously lawless men audaciously entering this port upon pretenses of necessity, (always so easily made,) but really that information may be got, and new enterprises hence successfully executed, be really what they claim, and truly entitled to the immunities secured to belligerents (if any) exhibited, be genuine, the bearers thereof, the persons authorized to bear them, their documents (if any) showing the character of the vessels, worthy of credence, and the acts committed, such as ought to receive the favorable countenance of a great and magnanimous power; in fine, whether the crew and vessel are lawfully entitled to the privileges accorded under the laws and by virtue of Her Majesty's proclamation to a real belligerent, or whether, on the contrary, the crew be not amenable to punishmemt and the vessel to seizure.

And never doubting the anxious desire of your excellency to maintain a strict neutrality, the undersigned feels assured that he will not be misunderstood, nor his conduct be deemed too officious, when the peculiar facts of this present case are duly considered. Now, for the first time, action by this government in the nature of a precedent is to be established respecting the status to be accorded to a vessel here first appearing and claiming a warlike character, suddenly, without notice, under circumstances of the gravest suspicion, the undersigned will be pardoned if the gravity of the case, in his opinion, make him feel it to be his duty to urge upon your excellency the greatest caution that not upon mere assertion of so-called officers, but after the severest scrutiny, it should be determined if this vessel and crew are entitled to the rights of belligerents, or whether the vessel should not be detained until the facts can be duly investigated.

Wherefore the undersigned, relying upon the vigilance of your excellency in a case of so much and so pressing importance, protests against the said vessel called the Shenandoah, *alias* Sea King, her so-styled officers, and crew; that from evidence
[55] already taken by him, as well as from facts patent and notorious to all, the legal presumptions are in this case against any just claim to the rights of belligerent; and that, in the instance of justice commend the community of nations, and impartial observance of Her Majesty's proclamation of neutrality and of imperial law, this important right here now under new and peculiar circumstances, in the case of this vessel, first sought to be established, be most rigidly examined, lest, under flimsy pretenses of necessity, the ports and coasts of Her Majesty's dominions be not unguardedly thrown open to afford lawless and unauthorized marauders cover, and bases for new and piratical enterprises against the citizens of a friendly power, their lives and property; and not only so, enterprises fraught with danger to the interests of Her Majesty's subjects, and in direct encouragement of the most audacious violations of the laws of humanity and of nations, lest finally new claims and additional and serious

complications unfortunately arise between Her Majesty's government and the Government of the United States.

I have, &c.,

(Signed) WM. BLANCHARD.

[Inclosure 8 in No. 9.]

Mr. Tyler to Mr. Blanchard.

TOORAK, *January* 28, 1865.

SIR: I am directed by his excellency the governor to acquaint you that your letter of the 28th instant was immediately referred by his excellency for the consideration and opinion of the legal advisers of his government, and that the same course has been pursued with your letter of yesterday's date protesting against the claims to the right of a belligerent of the vessel now lying in Hobson's Bay, called the Shenandoah.

His excellency will not fail to acquaint you with his decision, after he shall have received the advice of the attorney-general.

I have, &c.,

(For Private Secretary.)

(Signed) C. J. TYLER.

[Inclosure 9 in No. 9.]

Mr. Blanchard to Governor Sir C. Darling.

CONSULATE OF THE UNITED STATES OF AMERICA,
Melbourne, January 28, 1865.

SIR: I am in receipt of a communication sent from C. J. Tyler, esq., your excellency's aide-de-camp, dated to-day, informing me that your excellency has submitted my dispatches of the 26th and 27th January instant to the consideration of your legal advisers, and that your excellency's decision, when made, will be forwarded to me.

Evidence being daily accumulating in this office in support of the reasons for the protests I had the honor to forward to your excellency, I now beg leave to call your attention specially to the following:

1. That the Sea King, *alias* Shenandoah, now in this port, and assuming to be a war-vessel of the so-styled Confederate States, that any transfer of said vessel at sea is in violation of the law of nations, and does not change her nationality.

2. That inasmuch as Her Majesty's neutrality proclamation prohibits her subjects from supplying or furnishing any war material or ship to either belligerent, this vessel, having an origin as above, is not entitled to the privileges accorded to the belligerents by said proclamation.

3. That being a British-built merchant-ship, she cannot be converted into a war-vessel upon the high seas of the so-styled Confederate States, but only by proceeding to and sailing in such character from one of the ports of the so-styled confederacy.

4. That it is an established law that vessels are to be considered as under the flag of the nation where built, until legally transferred to another flag.

5. That said vessel sailed as an English merchant-ship from an English port, and cannot, until legally transferred, be considered as a man-of-war.

6. That not being legally a man-of-war, she is but a lawless pirate, dishonoring the flag under which her status is to be established, and under which she decoys her victims.

7. That her armament came also from Great Britain in English vessels, (the [56] *Laurel and Sea King, now Shenandoah,) both of which cleared under British seal, or if without it, in violation of established law.

8. That as such she has committed great depredations upon ships belonging to citizens of the United States, making her liable to seizure and detention, and the crew guilty of piracy.

I cannot close this without further protesting in behalf of my Government against the aid, and comfort, and refuge now being extended to the so-styled confederate cruiser Shenandoah in this port.

I have, &c.,

(Signed) WM. BLANCHARD.

[Inclosure 10 in No. 9.]

Mr. Blanchard to Mr. Leavenworth, United States consul at Sydney.

UNITED STATES CONSULATE,
Melbourne, January 28, 1865.

DEAR COLLEAGUE: You have been acquainted by telegraph of the appearance of a ship (screw-steamer) assuming the name Shenandoah, and claiming the right of belligerency from Victoria authorities.

I have forwarded to the governor, Sir Charles Darling, two dispatches respecting it, and beg to inclose copies of documents that have been exchanged between the authorities and the consulate, viz:

1. Dispatch of commissioner of trade and customs respecting prisoners to be provided for:

2. Reply to the above, and protest against granting any rights of belligerency:

3. Dispatch argumentative, aiming to prove that belligerent rights cannot be accorded.

4. Acknowledgment of receipt of above dispatches 2 and 3, showing that protests are under consideration.

Her Majesty's government being represented in Sydney by a governor, who is at the same time governor-general of all Australian colonies and commander of all Australian waters, thus overruling all other governors of Her Majesty's government in these dominions, I respectfully suggest to you the propriety and necessity of lodging a solemn protest in support of my protest here, showing such reasons as you deem expedient to induce his excellency to issue orders in all colonies to seize said vessel as a pirate, and in no way to grant to her belligerent rights.

In stating that your governor is governor-general, I have no authority just now at hand (being in great haste and mail closing) to see that I am really right, and it is therefore for you to decide whether my intentions can be carried out.

You are thus acquainted with all the facts relating to this piratical craft, and to the grounds I have taken against her, &c., and I rely upon your hearty and vigorous co-operation.

I have, &c.,
(Signed) WM. BLANCHARD.

[Inclosure 11 in No. 9.]

Mr. Tyler to Mr. Blanchard.

PRIVATE SECRETARY'S OFFICE,
Melbourne, January 30, 1865.

SIR: I am directed by his excellency the governor to acknowledge the receipt of your letter of the 28th instant, and to acquaint you that having fully considered the representations contained in that communication and in your previous letters of the 26th and 27th instant, and advised with the Crown law-officers thereon, his excellency has come to the decision that whatever may be the previous history of the Shenandoah, the government of this colony is bound to treat her as a ship of war belonging to a belligerent power.

I have, &c.,
(For private secretary,)
(Signed) C. J. TYLER.

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[57]

[Inclosure 12 in No. 9.]

Mr. Blanchard to Governor Sir C. Darling.

CONSULATE OF THE UNITED STATES OF AMERICA,
Melbourne, January 30, 1865.

SIR: I have the honor to acknowledge the receipt of a dispatch signed C. J. Tyler for private secretary, dated private secretary's office, January 30, 1865, informing me that after full consideration of my several dispatches, dated respectively the 26th, 27th, and 28th instant, and after advice of the Crown law-officers, your excellency has come to the decision that whatever may be the previous history of the Shenandoah, the government of this colony is bound to treat her as a ship of war belonging to a belligerent power.

As consul of, and on behalf and by authority of the United States of America, I hereby solemnly protest against the decision of the government of Victoria, as communicated to me in the above-mentioned dispatch. And I further protest, as consul aforesaid, against the government of Victoria allowing the said piratical craft Shenandoah, *alias* Sea King, to depart from this port, thus enabling her to renew her depredations upon shipping belonging to citizens of the United States of America. And I hereby notify your excellency that the United States Government will claim indemnity for the damages already done to its shipping by said vessel, and also which may hereafter be committed by said vessel, Shenandoah, *alias* Sea King, upon the shipping of the United States of America, if allowed to depart from this port. That the said vessel is nothing more than a pirate, which the nation whose vessels she robs and destroys has a right to pursue, capture, or destroy in any port or harbor of the world.

I have, &c.,

(Signed) WM. BLANCHARD.

[Inclosure 13 in No. 9.]

Testimony of Lillias L. Nichols.

I, the undersigned Lillias D. Nichols, wife of William Green Nichols, late master of the bark Delphine, on board of which I was a passenger, do solemnly declare:

I was taken prisoner, together with my husband, and conveyed on board the Shenandoah, and have been kept on board until the vessel reached Hobson's Bay, when I was at liberty to leave.

While on board I noticed that the plate in use was engraven "Sea King;" and I have frequently been told by the captain and others on board that the vessel was formerly the Sea King, which sailed from London in October, having on board the first lieutenant of the Shenandoah. I was also told by Mr. Bullock, the sailing-master, that the Laurel conveyed Captain Waddell and the other officers from England to the rendezvous with the Sea King, off Madeira. I was also told by the captain that the armament which is now on board the Shenandoah was brought out from England in the hold of the Laurel, packed in boxes.

(Signed) LILLIAS T. NICHOLS.

Subscribed before me on this 1st day of February, 1865.

(Signed) WM. BLANCHARD,
United States Consul.

[Inclosure 14 in No. 9.]

Testimony of William Bruce.

I, William Bruce, at present of the city of Melbourne, in the colony of Victoria, make oath and say:

1. That I am a naturalized citizen of the United States of America, and reside at No. 316 Broadway, Williamsburgh, New York State. On or about the 3d day of October, 1864, I shipped on board the bark Helena, Captain Staples, then lying in Newport dock, in the county of Monmouth, in that part of the United Kingdom of Great Britain and Ireland called Wales, as cook and steward.

2. That on or about the 4th day of October, in the year aforesaid, the said bark [58] *sailed from Newport aforesaid to Buenos Ayres, in the republic of Buenos Ayres, South America, laden with a cargo of railway-iron and other sundries, under the command of the said Captain Staples.

3. That the said bark Helena was an American ship belonging to Searsport, Maine, United States of America.

4. That no incident of importance occurred in the said voyage until, on or about the 29th day of October, 1864, when the said bark was within three days' sail of Madeira, a steamer hove in sight, and I reported the fact to Captain Staples; and about two hours afterward I was enabled with my naked eye to see that she was a steamer flying English colors.

5. That on the following day the same steamer, at about half-past 1 o'clock in the afternoon, under steam and flying the English flag, came on our lee quarter; and on the said bark displaying the colors of the United States of America, the said steamer fired a blank shot toward the said bark, and hoisted the flag of the so-called Confederate States of America.

6. That the said bark was thereupon hove-to, and a boat left the said steamer with eight persons therein, including three persons who represented themselves as officers of

the said steamer, who came on board the said bark and ordered the said Captain Staples and the chief officer, Mr. Peterson, in my hearing, to take the papers of the said bark with them and go on board the said steamer, and to look sharp, because another sail was in sight: and that they, the said captain and chief officer, were prisoners of war, and that the said bark was a prize to the confederate ship Shenandoah.: and thereupon the said Captain Staples, and chief officer, Peterson, left the said bark in the said boat, in charge of one Hunt, the master's mate, on board the said steamer called Shenandoah, and proceeded on board the said steamer, two others, namely, Bullock, sailing-master, and Mason, passed midshipman, representing themselves as of the aforesaid ranks on board the said steamer Shenandoah, remaining on board the said bark, and ordered the crew of said bark to lower away the sails, which they did, and after the expiration of about half an hour the said Captain Staples and chief officer left the said steamer in the said boat under the charge of the said Hunt, accompanied by another boat with about eight persons, (among whom was the carpenter of the said steamer Shenandoah, who told me his name was O'Shea, and that he was a citizen of New York, United States of America,) and came on board the said bark; and the said Bullock gave orders to the crew of the said bark to pack up their clothes and go on board the Shenandoah, meaning the said steamer, and told me to take all my cooking-gear on board the said steamer.

7. That in pursuance of the said order the said crew and myself went on board the said steamer in one of her boats, (the said Captain Staples and Chief Officer Peterson having been previously sent on board;) and on getting on board the said steamer, were ordered to give up our clothes, which we did.

8. That after going on board the said steamer, I and Louis Monrose and Peter Monrose, two of the crew of the said bark, were ordered by the said Bullock again to go on board the said bark, and break open the stores of the said bark, which we did, and the said stores, and also some slop-clothes, and the said bark's instruments, were put on board the said steamer; and the said O'Shea, the carpenter of the said steamer, ordered the said Louis and Peter Monrose to assist him in scuttling the said bark; and I saw the said parties go down the hold, taking augers with them, and make holes in the said bark with the said augers; and that after they had done so, I and the said Louis Monrose and Peter Monrose were ordered to leave the said bark and go on board the said steamer; and when I got to the gangway I was asked by the paymaster of the said steamer, one Smith, in the presence of the said Captain Staples, if I would join the said Shenandoah as ship's cook, and told me that one of my shipmates had already joined, and that it would be better for me to join; and I thereupon told him that I would not join, as I wished to go to Melbourne to see my mother, to which he replied, "Pity you were not in your mother's arms;" and about half an hour after I had been on board the said steamer, I saw the said bark sink; and that night I was put in irons, and on the following day, namely, on or about the 31st of October, 1864, the captain of the said steamer Shenandoah, one Waddell, said to me, "You might as well make up your mind to join:" to which I replied that I had no idea of joining. And the said Waddell thereupon said to me that, if I would join, he would put me in ten months' time wherever I wanted, and I again refused to join, when the said Waddell said, "You will be sorry for it."

9. That on or about the 1st day of November, 1864, one Whittle, the first lieutenant of the said steamer, said to me, "Have you made up your mind to join?"

[59] "To which I replied that I had not: and thereupon said, "You will be sorry for it, and you will be put in irons at night and made to work all day:" and in consequence of my again refusing to join, I was sent to work in the galley with the ward-room cook of the said steamer, and at night was put in irons.

10. That on or about the 3d of November, 1864, I was ordered to continue assisting the ward-room cook, and continued assisting him until or about the said 10th day of November, 1864. I was called by the said Whittle aft, and he then said to me, "Steward, you might as well join: it will be better for you:" and I thereupon, in consequence of being ironed every night, made work during the day, and pushed about and abused by the crew and officers, consented to join and subscribed a document agreeing to serve as ward-room steward, and I acted as ward-room steward on board the said steamer thereafter until the 1st of January, 1865, when, in consequence of being sick, I was let off duty, and remained off duty until the said steamer Shenandoah arrived at Hobson's Bay on the 25th day of January: and on the 28th January, 1865, I left the said steamer, and placed myself under the protection of the consul of the United States of America at Melbourne.

11. That during the time I was on board the said steamer Shenandoah, I was told by the ward-room cook (one Marlow, a native of the Isle of Man) that he shipped on board the Laurel steamer from the Sailors' Home, Liverpool, to go to Nassau, and that when he came to a bay at the back of Madeira, when the Laurel went to look for the steamer Sea King, and after three days looking for her the Sea King arrived and made signals to the Laurel, and the two steamers came together, and with the help of some fishermen the ammunition was put on board the Sea King from the Laurel, and that

the Sea King then went to the back of Deserta Island, and the Laurel went to the front of the island, and was chased by a vessel of war of the United States of America, and the Sea King sailed away in another direction, and that her name was then changed to the Shenandoah.

That I heard the fireman of the said steamer Shenandoah, one Jackson, a native of Liverpool, say, that he came out on the Laurel together with Simpson, a native of Ireland; William ———, a native of Birkenhead; Jim, the ward-room boy, a native of Liverpool; Bay Jones, steerage steward, a native of London; Lou Wester, fireman, a native of London; also another man, a native of London, called Cockney, to join the Shenandoah steamer; and all the said parties at different times told me that they left Liverpool to join the ship Sea King.

12. That one ——— Guy, the gunner of said steamer Shenandoah, and a native of Plymouth, or somewhere in the west of England, told the mate of the schooner Lizzie M. Stacy, taken as a prize in my presence, that he shipped at London in the Laurel steamer to come out and join the Sea King steamer.

13. That among the officers and crew of the Shenandoah are the following persons, viz, O'Brien, head engineer; ——— ———, third engineer; Jim ———, the fourth engineer; Simpson, sail-maker; Jim ———, boatswain's mate; Crawford, gunner's mate; Bullock, sailing-master, whom I have heard at different times remark "that we did not do so (referring at different times to the working of the guns) on board the Alabama."

14. That the said Simpson told me he was on board the Alabama at the time of her engagement with the Kearsarge, United States ship of war, and that he was a paroled prisoner.

15. That at the time I was first taken on board the Shenandoah, I saw the bell of the said steamer marked or cut with the words Sea King, and also the stanchions had the words Sea King cut on them, and the words were subsequently filed out of the bell and scraped off the stanchions, and the table services and cloths of the said steamer were marked with the words Sea King, up to the time I left her in Hobson's Bay as aforesaid.

16. That after I was taken on board the said steamer Shenandoah, the following vessels were captured, namely, the Charter Oak, on or about the 5th day of November, 1864; the Lizzie M. Stacy, schooner; De Godfrey, bark; Susan, brig; Kate Prince, ship; Edward, bark; and Delphine, bark; and all the said vessels, with the exception of the Kate Prince, were either burned or sunk.

17. That a number of persons taken as prisoners, amounting in all to twenty-five, were on or about the 12th day of December, 1864, landed by the said steamer Shenandoah, at Tristan d'Acunha, an island in the Atlantic Ocean, and there left by the said steamer.

(Signed) WILLIAM BRUCE.

[60] *Sworn at the city of Melbourne, in the colony of Victoria, this 7th day of February, in the year of our Lord 1865, before me.

(Signed) WM. BLANCHARD,
United States Consul, Melbourne.

[Inclosure 15 in No. 9.]

Testimony of John H. Colby.

I, John H. Colby, of Liberty, Maine, United States America, do solemnly declare and say:

That I shipped in Boston, Massachusetts, on board the schooner Lizzie M. Stacy, bound for Honolulu, and sailed in said vessel on the 4th day of October, 1864; that on or about the 13th day of November, 1864, the said schooner was hove-to by a blank shot from a steamship, under both steam and sails; that I with the rest of the crew was ordered to pack up my things immediately and go on board said steam-vessel by order of a person in uniform, who I afterward found was acting as second lieutenant of said steam-vessel; said lieutenant said that I was a prisoner of the Confederate States; that I with the rest of the crew was then put on board of said steam-vessel; that I asked said officer before leaving the schooner what was the name of said war-vessel; that said officer replied "Name unknown;" that upon being taken on board said steamer I was put in irons for the night, and the next morning released, and they tried to force me to work, but I resisted; the first lieutenant then ordered me to be triced up by the thumbs, and by these and other coercive measures I was in time compelled to join the vessel, in order to relieve myself from tortures and punishments; that I saw the name Sea King upon the bell, the wheel, the buckets, &c.; the name upon the wheel was afterward ground out, I turning the grindstone for that purpose; that the bell was taken by a person acting as carpenter's mate to the engine-room, and

the name was there filed out; that if the bell and wheel were now examined, it would be clearly evident that a name on each had thus been erased; that I served on board the said vessel until her arrival in Hobson's Bay on the 25th of January, 1865; that I came ashore on liberty on Monday the 30th of January, 1865; that while on board I learned the said vessel was called the Shenandoah.

(Signed) JOHN H. COLBY.

Sworn in duplicate before me this 2d day of February, 1865.

(Signed) WM. BLANCHARD,
United States Consul, Melbourne.

[Inclosure 16 in No. 9.]

Mr. Duffett to the attorney-general, Melbourne.

MELBOURNE, 83 COLLINS STREET, WEST,
February 3, 1865.

SIR: On Monday, the 2d instant, I attended at your chambers with Mr. Blanchard, the American consul, and left certain depositions (which he had caused to be taken) with your secretary, Mr. Chomley, for your perusal, with the view to establish that the Shenandoah is in fact the Sea King, &c.

Mr. Blanchard considered it to be his duty to place the depositions above referred to in your hands, so as to enable the government to take such steps in the matter as they may think necessary.

Mr. Blanchard has instructed me to state that he will on hearing from you be happy to attend you with the further evidence he has obtained in this matter.

I have, &c.,

(Signed) JOSEPH G. DUFFETT.

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[61] *[Inclosure 17 in No. 9.]

Mr. Chomley to Mr. Duffett.

CROWN LAW-OFFICES,
Melbourne, February 4, 1865.

SIR: I am directed by the attorney-general to acknowledge the receipt of your letter of the 3d instant, and to inform you that he has received and read the depositions in reference to the Shenandoah, and if Mr. Blanchard desires to see him, he will be glad to receive him on Monday next, at 12 o'clock noon, at these offices.

I have, &c.,

(Signed) A. W. CHOMLEY,
Secretary.

[Inclosure 18 in No. 9.

Mr. Duffett to Mr. Blanchard.

83 COLLINS STREET, WEST.
February 4, 1865.

DEAR SIR: The attorney-general has written me stating that he will be happy to see you on Monday next at 12 o'clock at the Crown law-offices.

Yours, faithfully,

(Signed) JOSEPH G. DUFFETT.

[Inclosure 19 in No. 9.

Testimony of George Silvester.

I, George Silvester, at present of the city of Melbourne, in the colony of Victoria, able seaman, make oath and say:

1. That I am a native of London, England.

2. That on the 5th day of October, 1864, I signed articles as a seaman to proceed to Nassau or the Gulf of Mexico, in the steamer Laurel, and on the following day I went on board the said steamer Laurel, then lying in the dock at Liverpool, and on the same day the said steamer Laurel went into the river Mersey, and while there I saw several cases on board as cargo, which I subsequently saw opened.

3 That on the 8th day of October, 1864, at about 3 o'clock in the afternoon, (the said steamer Laurel then being in the Mersey,) I assisted in taking on board 57 barrels of gunpowder, which were stowed in the said steamer Laurel, and after the said gunpowder was put on board, a steam-tug came alongside, bringing with her all of the officers and some of the crew that were on board of the steamship Shenandoah, at the time of her arrival at Hobson's Bay, (except the first lieutenant,) who then came on board the said steamer Laurel, as passengers, and the same night two steam-tugs came alongside the said steamer Laurel, and from them were put on board her a number of large cases which I saw subsequently opened, and also shot and shell.

That I assisted in storing the gunpowder put on board as aforesaid, and then saw several cases on board the said steamer Laurel, which I believe were put on board in dock, and which I subsequently saw opened on the Sea King steamer off Madeira, and cannon taken out of them.

5. That on the 9th day of October, 1864, the said steamer Laurel sailed from the Mersey, and on the 4th of the said month arrived at Madeira, where she took in coal and remained there for three days, when on or about the 18th of the said month a steamer came in and signalized the Laurel.

6. That the said steamer Laurel hove her anchor and followed the said steamer, at the same time signalizing to stand in for, as I recollect, Funchal, which the said steamer did, and at about 3 o'clock in the afternoon the said steamer and the Laurel steamer were alongside each other, and I then saw that the said steamer was a steamer called the Sea King.

7. That at this time both vessels were flying the English flag, and the Sea King anchored, and the Laurel fastened to her, and both hauled down their flags, and Waddell and all the officers brought out in the Laurel steamer went on board the said steamer Sea King, and took charge of her, and the Laurel's cargo was then transferred to the said Sea King steamer, the last of which was put on board on the morning of the 19th day of October, 1864, the crew having worked all night, when the
[62] *confederate flag was hoisted on board the said Sea King steamer, and the said Waddell (who now commands the Shenandoah) then asked the original crew of the said Sea King to enlist for a cruise on board the Sea King, (the captain who brought out the said steamer Sea King having, as soon as the Laurel's cargo was transferred, gone on board the Laurel,) which they refused to do, with the exception of four, namely, Martin, store-keeper; Hutchinson, engineer; W. Clark, coal-passer; Jones, engineer, steward, who enlisted with the said Waddell, and went on board the said Sea King, and the said Waddell also enlisted several from among the crew of the steamer Laurel, and to such as joined paid them £15 sterling as bounty, and agreed to give them (the sailors) £6 sterling per month for wages, independent of prize-money.

8. That the said Waddell said in my hearing "that he was going to wage war with the Federals," and subsequently proceeded to sea: the crew of the Sea King who did not join being put on board the Laurel.

9. That I saw the words "Sea King" on the buckets of the said steamer Sea King, on the life-buoys, on two bells on board, on the wheel and stanchions, and on the harness-casks, when I joined her as aforesaid, and I heard that the said steamer Sea King was to be called the Shenandoah, and at different times on the cruise the said words "Sea King" were painted over on the boats, and were erased at different times from the said other parts.

10. That the steamship Shenandoah, now in Hobson's Bay, Victoria, is the steamer Sea King I joined as aforesaid.

11. That the bolts now used for fastening the guns of the Shenandoah were brought out by and transferred from the Laurel steamer to the Sea King.

12. That the said cases put on board the Laurel steamer, and by her transferred to the Sea King steamer, off Madeira, as aforesaid, were afterward opened on board the Sea King steamer, at this time called the Shenandoah, and cannon taken out therefrom; also carriages, upon which they were mounted, and put on deck of the said steamer Shenandoah, and are now there, and from others of the said cause shot and shell were taken and stored on board the said steamer Shenandoah.

13. That the said gunpowder brought out by the Laurel steamer was put on board the Sea King steamer, afterward called the Shenandoah, as aforesaid.

14. That on the said cruise we fell in, on the 29th day of October, 1864, with the bark Alina, (with railway-iron,) which was scuttled, and afterward with the schooner Charter Oak, which was burned; the bark De Godfrey, which was also burned; the brig Susan, which was scuttled; the ship Kate Prince, which was bonded; the bark Adelaide, which was bonded; the schooner Lizzie M. Stacy, which was burned; the whaling-vessel Edward, which was burned; and the bark Delphine, which was burned.

15. That at the time the Sea King was left by the Laurel her whole crew, including officers, numbered twenty-three.

16. That the several seamen who joined the Shenandoah from prizes did so in order to avoid punishment.

17. That I am a naturalized citizen of the United States of America.

18. That when I first went on board the Sea King steamer from the Laurel there were two guns then on board of her mounted, which were guns throwing about a 16-pound shot, and with these guns all the captures made by the Shenandoah were made.

19. That the said two guns were not brought out in the Laurel.

(Signed) GEORGE SILVESTER.

Sworn at the city of Melbourne, in the colony of Victoria, this 16th day of February, 1865, before me.

(Signed) .

WM. BLANCHARD,
United States Consul, Melbourne.

Inclosure 20 in No. 9.]

Deposition of Edward S. Jones.

I, Edward S. Jones, at present of the city of Melbourne, in the colony of Victoria, officer, do solemnly and sincerely declare:

That I am a native of Gloucester, Essex County, Massachusetts, United States.

That on the 1st October, 1864, I engaged as chief officer of the United States bark Delphine, of Bangor, Maine, then lying in the Victoria dock, London.

[63] That on the 12th of October, 1864, said bark sailed for Akyab, with machinery on board, and that up to the 29th December, 1864, nothing unusual occurred.

That on the 29th December a sail was descried, about 10 a. m., ahead, and that coming up with her about 3 o'clock in the afternoon of the same day, I saw above alluded to vessel flying the English flag, when the bark Delphine continued her usual course, showing the United States flag. The vessel in question then hauled down her flag, and hauled to wind, as we supposed to speak us. She had no suspicious pennant about her, but I was then able to see that she was a steamer; said vessel subsequently hoisted the confederate flag, and fired blank shot, whereupon the Delphine hove-to. A boat from said vessel with five men and two officers, named Bullock and Minor, all well armed, boarded the bark Delphine. Bullock spoke to Captain Nichols, the captain took ship's papers, and at the request of said Bullock, Captain Nichols went on board the said vessel, where I was requested by said Bullock to accompany him. The boat of said vessel transferred us from said vessel, which we were told was the Shenandoah; Captain Nichols was ordered in the cabin, whereas I stopped on deck. Soon afterward Captain Nichols came from cabin, and told me the captain of Shenandoah had condemned his vessel (Delphine) and that the said captain ordered him to proceed on board her, in order to bring off his (Captain Nichols's) wife and child, as well as clothing. The first lieutenant of the said Shenandoah, Mr. Whittle, told me he had orders from his captain not to allow me to proceed again on board bark Delphine. Captain Nichols soon afterward arrived on board the Shenandoah, accompanied by his wife and child, and they brought also their clothes. Upon Captain Nichols's return to the Shenandoah, I was allowed to go to the bark Delphine, and immediately on reaching her, Bullock asked me to assist in setting fire to her, which I positively refused. The crew of said Shenandoah removed several boat-loads of stores, in which the crew of Delphine were made to assist. At about 10 o'clock in the evening I left the Delphine, and saw her set on fire by Bullock and a man Simpson. I did not see her sink. The paymaster of the Shenandoah told me I was a prisoner of war, and made me sign a parole.

That while on board of the Shenandoah I noticed three boats, all buckets, all life-buoys, and many knives and forks bore the mark "Sea King," and I was told by Mr. Bullock, sailing-master, Cotton, master's mate, Hutchison, third engineer, Minor, master's mate, and the carpenter, O'Shea, that the Sea King was her name previous to her being changed into Shenandoah. I have heard repeatedly all the officers say, with the exception of Mr. Whittle, that they came out from Liverpool in the Laurel to join this ship, meaning the Sea King, of London. I heard said officers also say that the guns and ammunition came out in the Laurel, and that it was a pre-arranged plan to meet the Sea King and proceed on a cruise. I also heard said officers state that the guns on the Shenandoah, as well as the ammunition, were transshipped from the Laurel on the Shenandoah off Madeira. I also heard them say that the Laurel awaited the Sea King at Madeira for some days, and that on the Sea King rounding a certain point, she was cheered by the crew and passengers of the Laurel, that the two ships signaled to each other, and that the Sea King, without coming to anchor, proceeded out again to sea, and was soon afterward followed by the Laurel. I heard Mr. Hunt, master's mate, say that the Sea King was bought in London for the confederate government for a sum, to the best of my recollection, of £45,000, (say forty-five thousand pounds.) I heard third engineer say that he shipped in her in London for Bombay. The carpenter of the Shenandoah, Mr. O'Shea, told me that when he went on board the Shenandoah,

she had no bolts to lash the guns, but that the bolts now serving, and which were made for that purpose, came with the Laurel from Liverpool, and that he fixed them. The reason why I was not confined was, because the captain was in hopes that I would join his ship. The first day of my stay in the Shenandoah, the first officer, one Whittle, wanted to put me in irons, whereupon Captain Waddell told him not to do so, as I might probably volunteer to become one of the ship, as he liked my broad shoulders. I was frequently offered to join the ship, and promised $75 a month, payable in gold, if I did so.

That two days before arriving in Hobson's Bay, I had to sign in duress, a parole, and on reaching Melbourne placed myself under the protection of the United States consulate.

(Signed) EDWARD S. JONES,
First Mate late Bark Delphine.

Subscribed and sworn to in duplicate before me this 6th day of February, 1865, as witness my hand and seal of office.

(Signed) WM. BLANCHARD,
United States Consul, Melbourne.

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[64] [Inclosure 21 in No. 9.]

Testimony of James Ford.

I, the undersigned, James Ford, of New York, United States of America, now residing in Melbourne, hereby declare:

That during the month of June, 1864, I shipped on board the United States brig Susan, at Philadelphia, as a seaman, and remained on board her up to the time of her capture by the so-called confederate steamer Shenandoah.

That said ship Susan sailed on the 29th September, 1864, from Cardiff, bound for Rio Grande, under Captain Hanson.

That nothing unusual occurred on said ship until the 10th November, when we sighted a sail ahead of us at about half past 3 o'clock a. m., making an eastward course. At about half past 5 o'clock same day, I was told by one of the crew below, the vessel we sighted before was running up astern. I then went on deck and saw said ship running toward us, flying the English flag; thereupon the captain gave orders to hoist our flag, after which the said vessel fired a blank shot and hoisted the confederate flag. Not heaving-to immediately, a second blank shot was fired, whereupon the said ship Susan hove-to.

A boat with five men arrived, with two officers named Chew and Brown, boarded us, and took the captain and first mate on board the Shenandoah, one officer accompanying them; whereas the other took possession and command of the said vessel Susan.

The same boat, accompanied by another, again came to the said ship Susan with about ten men, armed; they lowered the boat to the ship Susan, and ordered the crew to put their clothing, allowing only one bag per man, on board said boat.

The crew from the Shenandoah then took such stores from the Susan as they thought most desirable, and made crew of Susan give assistance in taking stores off. I was asked on board the Susan to join the crew of the Shenandoah, which I declined.

The crew from the Shenandoah then scuttled ship Susan, as I heard them knocking off planks in the hold. I, with others, then went on board the Shenandoah, and was again asked by officers and crew to join the ship, which I did, being unwell at the time. I then signed the articles for a cruise; the mate and second mate, who would not join, were put in irons, whereas the captain was left at liberty.

When on board the Shenandoah, I noticed that two 12-pounder guns, the bell, the wheel, and some buckets bore the marks Sea King, and on the bow I noticed the letters "I N G." That while sailing I was told by Warren, boatswain's mate, to assist in taking down the bell, which I did, and it was taken in the engineer's room. Subsequently I noticed the said bell hung up, but the name Sea King erased, and the marks of files or some instrument of that description were visible when I landed. The name Sea King was also erased or taken off from the guns and wheel, all of which bear marks to that effect.

That I overheard frequent conversations to the effect that the Laurel and Sea King met at Madeira, arriving to a prearranged plan, the former having ammunition, arms, and officers and crew on board for the latter. I cannot swear to the parties I overheard telling above.

That out of a crew of about fifty sailors (officers excluded) no more than four or six born or naturalized Americans were on board, the majority of the others being of British origin. That the above four to six born or naturalized Americans were captured prisoners, and in preference to torture enlisted, but that the original crew of sailors is of entirely foreign descent.

That about twenty-eight men were landed on the island Tristan d'Acunha.

That while I was on board the Shenandoah she captured ship Kate Prince, bark Adelaide, schooner Lizzie M. Stacy, bark Edward, and bark Delphine; and in all instances she proceeded in the same way, viz, in signaling to any ship she first hoisted the English flag; upon being replied by the United States flag, she invariably lowered it, approached the decoyed prey, hoisted a confederate flag, and fired a gun to make the ship heave-to.

That on arriving in Hobson's Bay I desired to get rid of my impressment, and placed myself under the protection of the United States consul.

(Signed) JAMES FORD.

MELBOURNE, *February*, 1865.

[65] Subscribed and sworn to in duplicate before me this 2d day of February, 1865, as witness my hand and seal of office.

(Signed) WM. BLANCHARD,
United States Consul, Melbourne.

[Inclosure 22 in No. 9.]

Testimony of George R. Brackett.

I, George R. Brackett, at present of the city of Melbourne, in the colony of Victoria, able seaman, do solemnly and sincerely declare:

That I am a native of Rocklane, Maine, in the United States of America.

That on the 5th day of October, 1864, I shipped at Boston on board the bark De Godfrey, of Boston, United States of America, whereof ——— Hallett was captain, for a voyage to Valparaiso.

That on the 6th day of October, 1864, the said bark, under the command of the said Hallett, proceeded on her voyage to Valparaiso, laden with a cargo of general merchandise; and no particular incident took place on the said voyage until about 8 o'clock in the morning of the 7th November, 1864, when we sighted a sail astern, which continued to gain on the said bark, and about 2 o'clock, when I was at the wheel of said bark, I saw that the sail was a steamer, and that she was getting up steam, and about half past 3 o'clock in the afternoon I saw the said steamer hoist the English flag; and about 10 minutes to 4 o'clock in the said afternoon the captain of the said bark De Godfrey gave orders to the mate, Mr. Taylor, to hoist the flag of the United States of America, which was done, and the said steamer thereupon hauled down the English flag and hoisted the flag of the so-called Confederate States of America, and fired a blank shot toward the said bark, and in pursuance of an order given by the captain of the said bark, she was hove-to, and the said steamer lowered a boat containing three persons, viz, Bullock, sailing-master; Scales, fifth lieutenant; Hunt, midshipman, who represented themselves of the aforesaid ranks on board the said steamer; and five men, who being well armed, came on board said bark. And the said Bullock said to the said Captain Hallett and the mate, Mr. Taylor, in my hearing, "Take your papers and go on board the Shenandoah; you are prisoners of war, and your vessel is a prize to the confederate steamship Shenandoah. And the said Hallett and the said mate were then taken on board the said steamer by the said Scales and five men, the said Bullock and Hunt remaining on board the said bark, and gave orders to clew up the sails, which was done.

That in about half an hour the said Captain Hallett and mate, Mr. Taylor, left the said steamer in charge of the said Mr. Scales in the said boat containing five men, accompanied by another boat containing seven persons all armed, and all the said parties came on board the said bark. And the said Bullock then gave orders to the crew of the said bark to break open the stores and put them in a boat, together with our clothing, and to go on board of the Shenandoah, which we did; and on getting on board the said steamer I saw a fire break out in the said bark, which continued burning until, about half past 11 o'clock that night, all sight was lost, the said steamer after the said fire broke out having steamed away.

That on my proceeding on board the said steamer aforesaid, Whittle, who said he was first lieutenant of the said steamer Shenandoah, asked me to join the said steamer, which I refused to do; and he then said to me, "You will fare worse," to which I made no reply, and was then ordered to the other side of the deck, where I went; and afterward the said Whittle, Bullock, and Grimble (second lieutenant on board the said steamer) came over, and the said Whittle then asked the rest of the crew of the said bark who were with me, and myself, if we were going to sign, to which we all replied "No." And the said Bullock then said, "Don't you calculate to sign?" To which we all replied again, "No." And then the said Whittle said, "I will give you two hours and a half to make up your minds, and if you don't sign then, I will put you in double irons, and put you in the fire-room before the furnace on the coals every night, and I will keep you four months if you don't sign, and make you work every day."

That at the expiration of the said two hours and a half Bullock came to us, and asked if we had made up our minds to sign, and, in reply, I declined again; but eventually, on his holding out threats of punishment, I and John Davy, William West, Walter Madden, and George Hord, being the crew of the said bark, consented to and did sign, agreeing to serve as seamen on board the said steamer Shenandoah for six months.

[66] That when I went on board the said steamer I saw the bell was marked or cut with the words Sea King, and about fourteen days afterward I was ordered by Howard, the boatswain of the said steamer, to assist in taking down the bell, which was taken down, and three days subsequently I was ordered to assist in putting it back in its place, and I noticed that the said words Sea King were taken off, and I was also, about two days before, ordered to scrape off the said harness-cask the said words Sea King, which I did, and also, subsequently, saw that the said words Sea King were erased from the guns, two 12-pounders.

That I also noticed a brass plate on said steamer, fixed between the two cabin doors, marked or cut with the words "built by A. S. Stephens & Sons, Glasgow," and that the after-part of the main hatch-combings was marked or cut with the figures and words "790 tons;" also the year the said steamer was built, which I now forget.

That while I was on board the said steamer the said Bullock Smith, paymaster of the said steamer; the said Howard Crawford, gunner's mate; Simson, coxswain of the captain's gig of said steamer, and Bowman, chief boatswain's mate, at different times told me they were on board the Alabama steamer, (sunk some time since by the Kearsarge, United States vessel of war,) and that they were sunk in her.

That while I was on board the said steamer the following vessels were captured, viz: the brig Susan, ship Kate Prince, bark Adelaide, schooner Lizzie M. Stacy, bark Edward, and the bark Delphine, and all the said vessels, except the Kate Prince and the bark Adelaide, were burned or sunk. That Waddell is captain of the said steamer Shenandoah, and, with the exception of the officers of the said steamer, during the whole time I was on board, out of about thirty-five, making the crew of the said steamer, there were only four Americans on board; all the rest of the crew being English, Irish, Dutch, Swedes, and Norwegians.

That on the said steamer arriving in Hobson's Bay, Victoria, I got liberty to go on shore, and, on getting on shore, placed myself under the protection of the consul of the United States of America.

(Signed) GEORGE R. BRACKETT.

Subscribed and sworn to, in duplicate, before me, this 3d day of February, 1865, as witness my hand and seal of office.

(Signed) WM. BLANCHARD,
United States Consul, Melbourne.

[Inclosure 23 in No. 9.]

Testimony of Carl Bollin.

I, Carl Bollin, of Stockholm, Sweden, do solemnly declare:

That I shipped on board Delphine in London, for a voyage to Akyab, on the 5th October, 1864, and we sailed on the 9th of said month.

That on the 29th December, 1864, we were captured by an armed vessel called the Shenandoah and taken on board and left in irons ten days, when I consented to work. I signed a parole before proceeding to do so, and on our arrival in Hobson's Bay was released, and placed myself under the protection of the American consul at the port of Melbourne.

That while on board one of the men told me he left the steamer Laurel off Madeira, and joined her; at that time she was the Sea King.

(Signed) CARL BOLLIN.

Subscribed and sworn to in duplicate before me this 4th day of February, 1865, as witness my hand and seal of office.

(Signed) WM. BLANCHARD,
United States Consul, Melbourne.

[Inclosure 24 in No. 9.]

Testimony of John Sandall.

I, John Sandall, of Stockholm, Sweden, hereby solemnly declare:

That on the 5th October, 1864, I signed articles for a voyage on board bark Delphine in London, to proceed on a voyage to Akyab, and sailed in her on the 9th October.

Nothing unusual occurred until the 29th December, when she was captured by [67] an *armed vessel called Shenandoah. On taking us on board they kept me in

irons ten days, after which I consented to go to work rather than be kept in irons. I remained on board working with the crew until her arrival in Hobson's Bay, when I was released, and placed myself under the protection of the American consul.

That while on board I had conversations with some of the men, who told me she was the Sea King, and that they joined her off Madeira, sailing in the Laurel from Liverpool to do so. I also noticed the letters "ING" on head-board; also a spoon marked Sea King.

(Signed) JOHN SANDALL.

Subscribed and sworn to, in duplicate, before me this 4th day of February, 1865, as witness my hand and seal of office.

(Signed) WM. BLANCHARD,
United States Consul, Melbourne.

[Inclosure 25 in No. 9.]

Testimony of William Scott.

I, William Scott, of Gothenburg, Sweden, but now residing in Melbourne, Australia, do solemnly declare:

That on the 5th October, 1864, I signed articles to proceed on a voyage to Akyab in bark Delphine as carpenter, and on the 9th October we sailed from the port of London.

That nothing unusual took place until the 29th December following, when we were captured by an armed vessel, at first showing the English ensign, and after firing a gun she displayed a flag of the so-called Confederate States of America.

That I, with the rest of the crew, were taken on board said vessel called Shenandoah, and asked to join, which I refused to do. I was then placed in irons and told I would be kept there for three or four months unless I would work for them. At the end of ten days I consented to work, and was released on signing a parole, and remained on board until her arrival in Hobson's Bay, when I was released and placed myself under the protection of the American consul at this port.

That during my stay on board I noticed the letters "ING" on part of her head-board; also a spoon marked Sea King, and saw that the buckets had had a name scraped off them.

(Signed) WM. SCOTT.

Subscribed and sworn to, in duplicate, before me this 4th day of February, 1865, as witness my hand and seal of office.

(Signed) WM. BLANCHARD,
United States Consul, Melbourne.

[Inclosure 26 in No. 9.]

Testimony of Frederick Lindborg.

I, Frederick Lindborg, of Sweden, but now residing in Melbourne, Australia, do solemnly declare and say:

That I shipped on the 5th October, 1864, on board the bark Delphine, as a seaman in London, bound to Akyab. Nothing unusual occurred until the 29th December, 1864. That on the said 29th December a sail was sighted about 9 o'clock in the morning, which we gradually neared. That when about three miles distant she hoisted the English flag; the American flag was then hoisted on our vessel, upon seeing which the strange vessel lowered the English flag, fired a blank shot, and raised the confederate flag. Our vessel was then hove-to. That our vessel was boarded, the captain and mate taken on the other vessel, and after bringing the captain back our vessel was declared to be a prize. That after packing up our clothes, I with the rest of the crew was taken on board said vessel, which proved to be a steamer, and was then asked by some of the crew to join her, but I refused to do so. That they then ironed me and put me among the sheep. That I was told by the carpenter's mate that the vessel's name was Shenandoah. That at the end of sixteen days I consented to work in preference to being kept in irons; I was then released and signed a parole.

[68] That I worked with the crew until our arrival in *Hobson's Bay. That on the 26th January, 1865, I was released from imprisonment, came ashore and went to the United States consulate for protection and assistance.

(Signed) FREDERICK LINDBORG.

Subscribed and sworn to, in duplicate, before me this 4th day of February, 1865, as witness my hand and seal of office.

(Signed) WM. BLANCHARD,
United States Consul, Melbourne.

[Inclosure 27 in No. 9.]

Testimony of Lillias L. Nichols.

I, Lillias Lervene Nichols, at present of the city of Melbourne, in the colony of Victoria, wife of William Green Nichols, master mariner, make oath and say:

1. That on the 29th day of December, 1864, I was on board the bark Delphine, belonging to Bangor, Maine, United States of America, in company with my husband, the above-named William Green Nichols, under whose command the said bark then was; and about 3 o'clock in the afternoon of that day, the said bark was hove-to in consequence of a blank shot fired toward her by a steamship called Shenandoah, flying the flag of the so-called Confederate States of America, and was subsequently boarded by Bullock, the sailing-master of the said steamer, who told my said husband and the chief officer, Mr. Jones, that they and the said bark were a prize to the Confederate States of America, and ordered them to go on board the said steamer, and in pursuance of said order my husband and the said chief officer went on board and subsequently returned to the said bark, and I was taken on board the said steamer, as also my husband, his officers and crew, and about 11 o'clock that night the said bark was burned.

2. That on my getting on board the said steamer one Waddell, the captain of the said steamer, said to me, Welcome on board the Shenandoah; and while I was on board the said steamer I was treated with kindness and consideration by the said Captain Waddell.

3. That while I was on board said steamer I frequently was in conversation with the said Waddell, who frequently told me that he came out in the Laurel steamer from Liverpool to a place off Madeira, and that the Laurel arrived there three days before the Sea King, and was waiting three days for the Sea King, and on the Sea King appearing they cheered her; and that the said steamer Shenandoah was formerly the Sea King, and was built at Glasgow, and that the Laurel and Sea King steamer met off Madeira, and that the guns and ammunition then on board the steamer Shenandoah were brought out by the said steamer Laurel packed in boxes.

4. That the said Waddell told me while I was on board the said steamer, that he left his wife in England, and that on leaving England he told her that he was going on a cruise, and that she would most likely hear a great many things to his detriment, but not to believe them, and the said Waddell also told me that he picked up his officers, some in Paris, some in Liverpool, and some in London, and that some were recommended by Semmes of the Alabama steamer, (lately sunk by the Kearsarge, United States ship of war,) and that his cruise was to burn and destroy everything flying the Federal flag.

5. That the said Waddell told me that Whittle, the first lieutenant of the said steamer, came out in the Sea King steamer, and the said Whittle also told me that he came out in the Sea King, to a place off Madeira, and that when they arrived they were cheered by the people on board the Laurel steamer on coming round the point.

6. That the said steamer Shenandoah arrived at Hobson's Bay on the 25th day of January, 1865, and two days previous to her arrival the paymaster, one Smith, called me to read a paper document, which I did, and found it was a parole not to bear arms or to do anything to the detriment of the confederate cause, and I then told the said Smith that I was not a prisoner of war, and Captain Waddell had frequently told me so, and the said Smith told me I must sign it to get released, and in reply I told the said Smith that I did not consider it binding, and that if any questions were asked me I would answer them. And he then said, "It is a mere matter of form, and was the only way for me to obtain my release:" and on the said representation that it was the only way for me to obtain my release, I signed the said paper document, protesting, as I was then under duress.

7. That I am a native of Searsport, Maine, United States of America.

(Signed) LILLIAS LERVENE NICHOLS.

[69] *Subscribed and sworn to in duplicate before me this 3d day of February, 1865, as witness my hand and seal of office.

(Signed) WM. BLANCHARD,
United States Consul, Melbourne.

[Inclosure 28 in No. 9.]

Mr. Blanchard to Governor Sir C. Darling.

CONSULATE OF THE UNITED STATES OF AMERICA,
Melbourne, February 9, 1865.

SIR: I have the honor to inform your excellency that I have already left at the Crown law-offices by my attorneys, Messrs. Duffett, Grant and Wolcott, at different

times the affidavits of the following persons, in relation to the Sea King, *alias* Shenandoah, all of which affidavits go to show the real character of said vessel, and are in support of the several protests I have had the honor to forward to your excellency, and which protests I now reiterate.

I have, &c.,
(Signed) WM. BLANCHARD.

List of affidavits left at Crown law-offices on 2d February, 1865.

Mrs. L. L. Nichols, wife of W. G. Nichols, master of bark Delphine, and passenger thereon.
William Bruce, steward, bark Alina.
John H. Coldby, seaman, Lizzie M. Stacy.

Left on 6th February, 1865.

Edward S. Jones, chief officer, Delphine.
James Ford, seaman, Susan.
George R. Brackett, seaman, De Godfrey.
Charles Bollen, seaman, Delphine.
John Sandall, seaman, Delphine.
W. Scott, carpenter, Delphine.
Frederick Lindborg, seaman, Delphine.
George Silvester, late a seaman on the Laurel, and fireman in the Sea King, *alias* Shenandoah.

[Inclosure 29 in No. 9.]

Mr. Blanchard to Governor Sir C. Darling.

CONSULATE OF THE UNITED STATES OF AMERICA,
Melbourne, February 10, 1865.

SIR: I most respectfully beg leave to call your excellency's attention to that part of the inclosed affidavit of John Williams, taken before me this day, late cook on board the Shenandoah, *alias* Sea King, relative to the shipment of men on board Shenandoah in this port.

I have, &c.,
(Signed) WM. BLANCHARD.

[Inclosure 30 in No. 9.]

Affidavit of John Williams.

I, John Williams, of Boston, Massachusetts, do make oath and say:

That I was taken from the bark De Godfrey the 7th day of November, 1864, as a prisoner, and put on board the steamship Shenandoah, now in Hobson's Bay. I worked as cook under compulsion and punishment on board said Shenandoah from the day of my capture until Monday, the 6th day of February, 1865. That on Monday last I swam ashore
[70] to obtain the protection of the United States consul. That when I left the said Shenandoah on Monday last, there were fifteen or twenty men concealed in different parts of said ship, who came on board since said Shenandoah arrived in Hobson's Bay, and said men told me they came on board said Shenandoah to join ship; that I cooked for said concealed men for several days before I left. That three other men in the uniform of the crew of said Shenandoah are at work on the Shenandoah, two of them in the galley and one of them in the engine-room; that said three other men in uniform joined said Shenandoah in this port; that I can point out all the men who have joined said Shenandoah in this port.

(Signed) JOHN WILLIAMS.

Subscribed and sworn to in triplicate before me, this 10th day of February, 1865, as witness my hand and seal of office.

(Signed) WM. BLANCHARD,
United States Consul, Melbourne.

[Inclosure 31 in No. 9.]

Mr. Coneley to Mr. Blanchard.

CROWN LAW-OFFICES,
Melbourne, February 11, 1865.

SIR: I am directed by the law-officers of the Crown to acknowledge the receipt of your letter of yesterday's date, addressed to his excellency the governor, and containing an affidavit of one John Williams relative to the shipment of men on board the Shenandoah in this port.

In reply, I am to inform you that the above-named John Williams may attend on Monday morning next, at the office of the Crown solicitor, and if he can give evidence sufficient to support a charge of misdemeanor against any of the persons concealed on board the Shenandoah, or against any of the officers of that ship, proceedings will be taken immediately.

I have, &c.,
(Signed) A. W. CONELEY,
Secretary.

[Inclosure 32 in No. 9.]

Testimony of John Williams.

I, John Williams, of No. 6 Richmond street, Boston, Massachusetts, do declare on oath:

That I shipped on board the bark De Godfrey, Captain Halleck, and sailed in said bark from Boston on the 6th of October, 1864; that nothing unusual occurred until the 7th of November, 1864, when a vessel under steam and sail, flying the English ensign, ran down to us, lowered the English flag, and hoisted the confederate flag, which I knew, fired a cannon for said bark to heave-to, which said bark did; that a boat from said steamer, containing two officers and six men, all armed, came alongside; both officers came on board said bark, and ordered the captain and first mate to go on board said steam-vessel, and take the bark's papers with them; that the captain and mate, as ordered, did go; that one of the said armed officers took charge of the bark in the captain's absence; that when Captain Halleck returned, he was allowed to take only part of his clothing; that we were all then ordered on board the said steam-vessel; that before I had reached the said steam-vessel I saw the bark I had left on fire, and I watched her until the mainmast went over the side; that after I got on board I was ordered to go into the cabin and work, and all hands called to splice main brace. That the next day the captain of said steamer, Mr. Waddell, said I had better join the ship, as it would be better for me; that as colored people were the cause of the war, if I did not join it would go hard with me; that said Waddell said he wanted to get all the colored persons he could; that I offered to work, but refused to join ship; that he then said he would put me in the coal-hole for six months; that he then offered me a month's advance (£6) which I refused, because I am a loyal citizen, and have served my time in the Navy of the United States; that I was in the Congress when she was sunk in Hampton Roads, and had with me my discharge from the Minnesota; that I have been triced up by the thumbs seven times for upholding my country; that I have been triced up after my work was done from 6 o'clock p. m. until 9 o'clock p. m.; that I told Mr. Whittle that I was forced to join said Shenandoah, and if the Minnesota was
[71] *here, she would blow this vessel out of the water; he then ordered me to be triced up by the thumbs, which was done by the master-at-arms; that I continued at work on board said vessel until her arrival in the port of Melbourne, and until Monday night last, when I swam ashore, to find the United States consul; that when I first went on board the said steamship I saw that her articles read "Shenandoah," but all parts of the vessel were marked "Sea King," of Glasgow; that two 12-pounder guns were marked "Sea King," with a crown, and the letters P. D., one on each side of the crown, and the said guns were so marked when I left the said Shenandoah on Monday last; that the cooking-stove that I used while on board was marked "Sea King," of Glasgow; that the said stove was on board on Monday last; that Captain Waddell told me he would get me a better stove as soon as the vessel went on the slip; that the bell, sideboard, wheel, and brass plate on the cabin door were all marked "Sea King" when I first went on board the said Shenandoah; that in all the captures made by said Shenandoah since I have been on board, the guns marked "Sea King," and having a crown and letters P. D. as before described, were used to bring the vessel to; that no other cannon have been fired since I came on board.

(Signed) JOHN WILLIAMS.

Subscribed and sworn to in duplicate, this 11th day of February, before me, as witness my hand and seal of office.

(Signed) WM. BLANCHARD,
United States Consul, Melbourne.

[Inclosure 33 in No. 9.]

Testimony of Walter J. Madden.

I, Walter J. Madden, of Boston, Massachusetts, do declare on oath:

That I sailed from Boston, Massachusetts, in the bark De Godfrey, Captain Halleck, on October 6, 1864, bound to Valparaiso; that on the 7th of November, 1864, the said bark was captured by a steamer which I afterward learned was called Shenandoah, said steamer first showing the English ensign and after we showed our colors she hoisted the confederate flag; that I was then ordered on board the said Shenandoah; that after I got on board I was told that if I would not join said Shenandoah I would be put in irons and in the coal-hole until I did join or until said vessel arrived at a port to land me, which might be several months; that being sick at the time, and in order to avoid punishment, I consented to join her for six months, against which shipment I now protest; that when I came on board said Shenandoah, I saw the aprons on two quarter-deck cannons marked "Sea King," which words "Sea King" were about one month afterward erased; that the bell forward was also marked "Sea King," which words were erased; that I served on board said Shenandoah, as captain of the hold; that all the stores on board said vessel down to her kelson are marked "Sea King," except those taken from the vessels captured after I came on board said Shenandoah; that the letters "ING" cut in the head-board, which is broken off said ship Shenandoah, and painted over, were still visible when I left the vessel on the 7th February, 1864, in the port of Melbourne; that when I left the vessel on the 7th instant, there were men hid in the forecastle of said ship, and two working in the galley, all of whom came on board of said vessel since her arrival in this port; that the officers pretend they do not know that said men are so hid. That the guns on the quarter-deck, marked "Sea King," when I came on board, were the only guns on board said Shenandoah that were used to make prizes; that on the occasion of the capture of the Delphine one of the rifled guns of said vessel was cleared away for use, but the vessel hove to without a shot from said rifled gun.

(Signed) WALTER JAMES MADDEN.

Subscribed and sworn to in duplicate before me, this 9th day of February, 1865, as witness my hand and seal of office.

(Signed) WM. BLANCHARD,
United States Consul, Melbourne.

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[72] * [Inclosure 34 in No. 9.]

Testimony of Thomas Jackson.

I, Thomas Jackson, at present of the city of Melbourne, in the colony of Victoria' able seaman, make oath and say:

1. That I am a native of Yorkshire, England, and between three and four months ago I shipped at Liverpool on board the Laurel steamer, of Liverpool, to proceed on a voyage to the Gulf of Mexico, and was shipped and taken on board the said steamer Laurel, by Allen, chief engineer of Fraser & Co., of Liverpool, while under influence of drink, and the day after I was taken on board the said steamer a number of boxes were hoisted on board the said steamer Laurel from two tug-boats, while the Laurel was in the Mersey, and I assisted in putting the said boxes on board, and on the following day the Laurel proceeded on her said voyage, or supposed voyage.

2. That after the expiration of about five days from the said steamer's leaving Liverpool on the said supposed voyage she anchored at Madeira and took in coal, and waited at anchor there for about three days, when a steamer signalized the said steamer Laurel from outside, and the said steamer Laurel then weighed anchor and proceeded to the back of the island and waited for the aforesaid steamer, which came alongside, and I then saw the words "Sea King" on the bows.

3. That the cargo brought out in the said steamer Laurel was then transferred to the said steamship Sea King, such cargo being packed in boxes, and was put on board the Laurel at Liverpool while I was on board, and which I assisted in putting on board as aforesaid, and the said steamer Sea King immediately proceeded on her voyage and hoisted the flag of the so-called Confederate States of America, and the people on board the Laurel gave the Sea King three cheers, and the Laurel then proceeded, as I believe, to Nassau.

4. That I shipped on board the said steamship Sea King at Madeira as fireman, being engaged by Whittle, who is now first lieutenant of the steamship called the Shenandoah, having been first well supplied with rum to drink by the said Whittle and Bullock the sailing-master.

5. That about two days after leaving Madeira in the said steamer Sea King the said

words "Sea King" were painted over, and the said Whittle, after the said cargo was put on board from the said steamer Laurel, and about a day after the said steamer Sea King left Madeira, read his commission to the crew, and told me that I was supposed to be a southern man, and the name of the said steamship Sea King was in future to be Shenandoah, and thereupon from that time afterward the said steamship Sea King was called Shenandoah.

6. That in about a month or six weeks after leaving Madeira, in the said steamer Sea King, (at this time called the Shenandoah,) the bell of the steamer bearing the words "Sea King" engraven thereon was brought to me by Grey, the gunner of the said steamer Shenandoah, who told me to help file the said words "Sea King" out of the said bell, which I did, assisted by Martin the store-keeper of the said steamer, and the next day the said Martin took the said bell back to one of the men, and I afterward saw the said bell on the top-gallant forecastle, and the said bell was on board the said steamer Shenandoah when I left her in Hobson's Bay, Victoria.

7. That all the officers on board the said steamship Shenandoah, with the exception of the first lieutenant, came from Liverpool in the said steamship Laurel, and went on board the said steamer Sea King at the back of Madeira as aforesaid.

8. That the said cargo put on board the said steamer at the back of Madeira from the Laurel, packed in boxes as aforesaid, was afterward opened, and consisted of cannon, carriages, shot and shell, and also powder; and the said cannon were afterward mounted on board the said steamer Sea King, now Shenandoah.

9. That about two days before the said steamer Shenandoah arrived in Hobson's Bay the said words "Sea King" were still visible on the bows of said steamer Shenandoah, and the said Whittle told some of the crew to paint over the bows of the said steamer again, which they did, and painted a white streak around her stern back.

10. That about six weeks after leaving Madeira as aforesaid, some plates with the words "Sea King" engraved or cut therein affixed between the cabin doors and other places on the said steamship then called the Shenandoah, were unscrewed by the carpenter (O'Shea) and thrown overboard.

11. That I have sailed eight or nine years backward and forward from the United States of America, and have a protection as a United States citizen, which is now, together with all my clothes, on board the said steamer Shenandoah.

12. That the said Sea King had on board of her when I joined her from the
[73] said *Laurel near Madeira two mounted cannon, and that the said two mounted cannon did not come out in the said Laurel; that the said two mounted cannon were the only cannon used to make captures or prizes with, while I was on board the said Shenandoah; that the cannon taken from the said Laurel had never been fired since they had been put on board the said Shenandoah, and I left the Shenandoah on the 27th day of January, 1865, at the port of Melbourne.

(Signed) THOMAS his + mark JACKSON.

Subscribed and sworn to in duplicate (first reading of the above oath to Thomas Jackson in the presence of J. B. Swasey and Simeon Gage, who witnessed also his mark) before me, this 8th day of February, 1865, as witness my hand and seal of office.

(Signed) WM. BLANCHARD,
United States Consul, Melbourne.

[Inclosure 35 in No. 9.]

Mr. Blanchard to Governor Sir C. Darling.

CONSULATE OF THE UNITED STATES OF AMERICA,
Melbourne, February 13, 1865.

SIR: I have the honor to forward to your excellency, inclosed herewith, the affidavits of three persons, taken before me, in relation to the Sea King, *alias* Shenandoah, which affidavits go to show the real character of said vessel, and are in support of the several protests I have had the honor to forward to you:

1. John Williams, late a prisoner from the American bark De Godfrey, and an impressed cook on board the said Sea King, *alias* Shenandoah.

2. Walter Madden, late a prisoner from same bark, and captain of the hold on board said Sea King, *alias* Shenandoah.

4. Thomas Jackson, late a seaman on board the Laurel, and fireman on board the Sea King, *alias* Shenandoah.

I have, &c.,
(Signed) WM. BLANCHARD.

[Inclosure 36 in No. 9.]

Mr. Warde to Mr. Blanchard.

PRIVATE SECRETARY'S OFFICE,
February 13, 1865.

SIR: In acknowledging the receipt of your letter of this date, I am directed by his excellency to acquaint you that the matter to which it more particularly refers, and which was first brought under his notice in your letter of the 10th instant, has engaged, and continues to engage, the earnest attention of the colonial government.

I have, &c.,
(Signed) L. H. WARDE,
Private Secretary.

[Inclosure 37 in No. 9.]

Mr. Blanchard to Governor Sir C. Darling.

CONSULATE OF THE UNITED STATES OF AMERICA,
Melbourne, February 14, 1865.

SIR: I have the honor to forward to your excellency, inclosed herewith, the affidavit[8] of F. C. Bebrucke and Hermann Wicke, late prisoners from the American bark Alina, and impressed sailors on board the Sea King, *alias* Shenandoah, taken before me this day, which affidavits are in support of my protests, and also tend to show a continued violation of law by persons on board said vessel.

I have, &c.,
(Signed) WM. BLANCHARD.

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[74] *[Inclosure 38 in No. 9.]

Testimony of Hermann Wicke.

I, the undersigned, Hermann Wicke, now of the city of Melbourne, solemnly declare and make oath:

That I am a native of Port Hanse, district Achem, kingdom of Hanover, Germany; that I shipped as ship's boy, on the 5th October, 1864, at Newport, England, on board the American bark Alina; that on the 6th October the Alina sailed from Newport for Buenos Ayres, and that up to the 29th October nothing unusual occurred; that on the 29th October, at about 10 a. m., a steamship, with steam up, and under full sail, was descried coming toward the bark Alina, and on nearing about two miles the English ensign was hoisted on said steamer, whereupon the bark Alina hoisted the United States colors; that about 1 o'clock on same day, when within a distance of three quarters of a mile, the said steamer fired a blank shot, lowered the English flag, and hoisted the flag of the Confederate States of America; that the bark Alina thereupon hove-to, and was boarded by a boat from said steamer manned with five sailors and two officers, who were all fully armed with revolvers; that the captain and mate were ordered on board the steamer, whereas the crew was required to remove such stores from the Alina with two boats from Alina and two from the steamer, as were pointed out by an officer of the steamer who was left on board; that the crew was informed that the ship was a prize of the Confederate States of America, and that each of the crew would be allowed to take one bag of clothing on board the steamer; that I went with others on board the steamer, on the bell of which I saw the name Sea King, which subsequently was erased; I was told the name of said steamer was Shenandoah; Captain Waddell, of steamer Shenandoah, asked me to join ship; I was intimidated, and, not understanding English properly then, I replied yes to everything I was told and asked; I signed, being afraid that by not doing so I might lose my life; that I served on board the Shenandoah as coal-trimmer, and on the passage to Melbourne eight ships were captured by the Shenandoah, for the heaving-to of which two ordinary ships' guns aft alone were used; I never saw any of the two rifled guns out of the four 68-pounders used or fired; that William Clark, also a coal-trimmer on board the Shenandoah, told me she sailed from London as the Sea King, and that he shipped in London on board the Sea King; that the said William Clark was still on board on the 12th instant, when I left the Shenandoah; that since her arrival at Hobson's Bay I did the work of "firemen's mess cook," consisting of bringing to and fetching from the cooking-galley the food for the firemen, and clearing table, &c.; that the rations in Hobson's Bay are served out by the master-at-arms, (I believe named Reed,) who gives the rations to Quartermaster Vickings, and this latter brings the rations to the

gallery to be cooked by cook, known by the name of Charley; that said cook Charley was not on board the Shenandoah on her arrival in the bay; he went on board since her arrival, and he told me he would join the ship as cook; that he dared not do it in the port, but that he would do it when proceeding outward; that I also saw said cook take rations to a number of men concealed in the forecastle, who went on board since her arrival in Hobson's Bay; that on Saturday, the 11th February, 1865, when working and cleaning the Shenandoah, three boys who came on board the Shenandoah since her arrival in this port assisted in painting between deck, whereas the number of men so concealed (as mentioned above) worked on deck; that said men so concealed, in number about ten, receive rations cooked in same cooking-apparatus, and served in same way as the regular crew on board; they eat out of the ship's plates in the forecastle, such as were used by the prisoners while on the cruise; that they sleep on board, one part in forecastle, the other part between deck; that the cook Charley and another, which I could identify if seeing him again, wore sometimes the ship's uniform; that on the 12th instant I left the Shenandoah, on leave, and having joined her under intimidation, against which I hereby protest, I place myself now under the protection of the United States consulate at Melbourne.

(Signed) HERMANN WICKE.

Subscribed and sworn to, in duplicate, before me the 14th day of February, 1865, as witness my hand and seal of office.

(Signed) WM. BLANCHARD,
United States Consul, Melbourne.

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[75] *[Inclosure 39 in No. 9.]

Testimony of F. C. Bebrucke.

I, F. C. Bebrucke, of Lubeck, in Germany, seaman, do declare on oath:

That I shipped on board the American bark Alina, of Boston, at Newport, England, on the 5th of October, 1864, and sailed in said bark on the 6th of same month, bound for Buenos Ayres; that nothing unusual occurred until the 29th of October, when a steamship neared us, flying the English ensign, which was then lowered, another flag hoisted, and a blank shot fired to heave our bark to; that the said bark hove-to, and was boarded by armed men from the said steamship; that said armed men ordered the crew to take one bag of clothes, and go on board said steamship; that all the crew of said bark did as ordered; that when I went on board said steamship I found eight guns mounted, on two of which guns I saw the words Sea King; that her crew consisted of twenty-three officers aft; that in addition to the above officers there was one gunner, two gunners' mates, four quartermasters, two cockswains, one boatswain, two boatswains' mates, two carpenters, one sail-maker, four firemen, one store-keeper, two coal-trimmers, one master-at-arms; that Sea King was also on the bell forward and the harness-casks; that on going on board steamship I was asked to join her, which I refused to do; that the master-at-arms was then called, who put me in irons, and in top-gallant forecastle, along with the sheep and hens, where I was kept from Saturday 3 p. m. until Sunday night 11 p. m; that to avoid such punishment I consented to join said steamship, against which imprisonment I now protest; that after I came on board the steamship, (which I heard called Shenandoah,) she made eight captures, some of which were burnt, some sunk, and some bonded and let go; that I remained on board said steamship until Sunday, the 12th of February, 1865, when I came on shore at Melbourne on liberty; that the only cannon fired while I was on board were the two guns that had Sea King marked on their aprons; that the said marks are not now on the said two guns; that all the prizes were hove-to with said two guns; that before I left the said steamship I saw about ten men concealed in said Shenandoah: some of said men told me they came on board to join; that several of the said men were at work with me on Saturday last, with the knowledge of the officers; that one of said men told me that he could not sign articles in this port, but was going to do so as soon as he got outside; that one man who was in the galley (who came on board in this port) wears the uniform, and performs his daily duty in said uniform; that said man in the galley has been wearing the uniform for about eight or ten days; that I heard said man in the galley called "Charley;" that all the said men who came on board since we have arrived in Melbourne have rationed from the said ship Shenandoah; that I have seen the master-at-arms serve out their provisions to Vicking; that after the provisions are cooked I have seen Quartermaster Vicking take it to them from the galley while concealed in the forecastle.

(Signed) F. C. BEBRUCKE.

Subscribed and sworn to in duplicate before me, this 14th day of February, 1865, as witness my hand and seal of office.

(Signed) W. BLANCHARD,
United States Consul, Melbourne.

[Inclosure 40 in No. 9.]

Mr. Blanchard to Governor Sir C. Darling.

CONSULATE OF THE UNITED STATES OF AMERICA,
Melbourne, February 15, 1865.

SIR: Having already forwarded to your excellency various affidavits taken before me relative to the Sea King, *alias* Shenandoah, in support of the protests I have had the honor to make to you, I now respectfully offer to your consideration the following summary of facts derived from that testimony, with my view of the law applicable thereto.

In October last the Sea King cleared from England, ostensibly for Bombay, loaded with coal; and, further, equipped with guns, sails, stores, &c., for a long voyage, crew ample, and, besides the regular officers of such a vessel, a lieutenant in the so-called confederate service.

Proceeding upon her cruise, she, after a few days, by a preconcerted arrangement, falls in with the Laurel, also from England, and receives from her, upon the
[76] high seas, a further armament, munitions, &c., and the remainder of her officers. This being done, the Sea King hauls down the British flag, and hoists that of the so-called confederacy, assumes a new name, and commences more active hostilities upon the commerce of the United States.

Continuing her cruise after the destruction of several vessels, she enters this port, the first one since clearing from England, and drops anchor in Hobson's Bay, flying the so-called confederate flag, and styling herself the Shenandoah, a confederate vessel of war.

This voyage divides itself into two parts, yet all one cruise and one vessel; the former part rather a transport or store-ship, still well capable of seizing unarmed vessels; the latter part rather an armed cruiser, yet with much to be done to render her really efficient.

The vessel cleared from England really with the intent to be employed against the United States, and was equipped in England to that end. Immediately upon leaving she began the designed hostile cruise, equipped at the start, fully in some respects, (as with coals, two cannon, cordage, sails, extra propeller, &c., and an officer of the so-called Confederate States,) but rather as a store-ship or transport, but in nearly all the cruise fully equipped to effect the intent with which she left England, and with that intent practically and repeatedly executed.

This vessel equipped in England with the intent as stated, the intent absolutely perfected in the hostile cruise, (still in progress, and only here interrupted to make it more effective hereafter,) now lies in reach of British law.

Is she an offender against the law?

This case differs in some respects from all the reported cases. A vessel has not been built for, nor (as we know) been sold to the so-called confederate government.

The difficulties which existed in the minds of two of the judges in the Alexandra case do not appear in this. The facts here bring this vessel within the condemnatory opinion of all the judges in that case. In that the charge of "transport or store-ship" was stricken off, and the only remaining one was, substantially, "equipped with intent, &c." The arrest was made too soon to make the intent quite sure. A new hull, with only two or three things *argumentatively* pointed at as consistent only with a guilty design. The chief baron had committed himself by his direction to the jury in that case, and yet he only insisted (the transport charge not applying) upon some equipment which would render this vessel more or less effective in a hostile cruise. Baron Bramwell agreed, substantially, not going so far, while Barons Channell and Pigot found against the Alexandra.

The facts, then, in this case condemn the Sea King (Shenandoah,) upon the law even of the Alexandra case, as laid down by all the judges. Here we find a "fitting out," an "equipment" of a vessel, with "intent" to be employed as a "transport" or "store-ship," and to cruise or commit hostilities against a friendly power. The "intent," the "fitting out," formed, done, in England, the vessel in completement of the intent actually fitted out and equipped, sailed from England: first, rather as a "store-ship or transport," to furnish a more warlike cruiser with guns, coals, cordage, sails, &c., for a long cruise; and second, more fully equipped and officered, with a new name, destroying the commerce of the United States. The original equipment, thus augmented, done in completement of the same design and as part therefor. The original and more complete subsequent equipment, one act in completement of the one intent and one purpose, began in England and perfected there to a certain and sufficient (but afterward to a more complete) extent, even yet not fully perfected, and here designed to be accomplished. Thus, then, the "intent," "to be employed," &c., is actually carried out, and the offense in all its parts of purpose and execution repeatedly committed; and now from this port, and with increased power, sought to be further repeated.

The law applicable to this offense extends to all parts of Her Majesty's dominions. Her Majesty's officers of customs, &c., are duly armed with power to enforce it against the offending vessel.

Proceedings may be *in personam* or *in rem*, or in both.

The offense, though committed in one part of Her Majesty's dominions, may be punished in another part. The nature of the misdemeanor, if it could be punished only in the place of the offense, the law would be nearly nugatory. Is it possible that an act declared to be unlawful when done in any part of Her Majesty's dominions, can only be inquired into in the jurisdiction of the place of the offense? If a vessel be fitted out against the law in Sydney, must the authorities at Melbourne refuse to move when the offender comes to this port? Are criminals escaping from England not liable to arrest here? The act authorizes, in the same terms, officers of excise, customs,
[77] and officers of *Her Majesty's navy, in all parts of Her Majesty's dominions, to execute the law upon persons and things. Is it to be said that, although the offense has been committed, the offenders and vessel are to go without challenge in all parts of Her Majesty's dominions, except in the particular jurisdiction of the original offense? Upon what rule of law can such a strange doctrine be maintained, disregarding even the plain directions and most certain intentions of the act? For a crime inaugurated and continued, is a perpetual offense, wrong from the beginning, wrong whereon in the prosecution of the wrong, each new departure a new offense with aggravation.

This vessel is not a legal cruiser of the so-styled confederacy. She is invested with no immunity, entitled to no consideration by her false assumption. She is not to enjoy the advantage of her own wrong. Entering here, as everywhere in British ports, she is a wrong-doer continuing and aggravating the original offense. Her entering here, intending to continue her illegal cruise, is, as against this jurisdiction, a new offense, which renders her amenable to the local jurisdiction.

Whether, then, we interpret the foreign-enlistment act in the manner which its obvious intentions almost absolutely require, or in the manner suggested to me by the Crown law-officers in a recent interview, in either case this vessel should be detained. For if it be granted that the evidence presented would doubtless be sufficient to that end in England, then that evidence should be held sufficient to the same purpose here, because, upon the principle above referred to, this vessel, cruising into this port upon an illegal expedition against the United States, and intending to continue that cruise, is an offender here. Having gained no immunity by her pretended claim, she simply remains, by British law, an illegal and criminal rover of the sea, everywhere an offender against that law, and in every new port committing, as to the new jurisdiction, a new offense.

Your excellency will observe that in the foregoing I have confined myself to a view wholly taken from imperial law. I have urged nothing from a consideration of the law of nations, nor from the obligations of treaties. These, indeed, doubtless Her Majesty's proclamation of neutrality and the foreign-enlistment act only illustrate and enforce. Nor can they be interpreted apart without manifest injustice.

I trust, therefore, that, upon further reflection, your excellency will reconsider your decision regarding this vessel, against which I have felt constrained to protest so earnestly.

I have, &c.,
(Signed) WM. BLANCHARD.

[Inclosure 41 in No. 9.]

Mr. Lyttleton to Mr. Blanchard.

POLICE DEPARTMENT, SUPERINTENDENT'S OFFICE,
Melbourne, February 15, 1865.

SIR: I have the honor to inform you that I arrested four men last night who were making their escape from the ship Shenandoah. They are now in the watch-house at Williamstown, and I shall feel obliged by your sending Madden or some other person who may possibly be able to identify them.

I have, &c.,
(Signed) THOMAS LYTTLETON,
Superintendent.

[Inclosure 42 in No. 9.]

Mr. Blanchard to Governor Sir C. Darling.

CONSULATE OF THE UNITED STATES OF AMERICA,
Melbourne, February 17, 1865.

SIR: I received information yesterday from Mr. J. McFarlane, emigration officer, in

reply to an inquiry, that the Shenandoah was taking in 300 tons of coal in addition to the quantity she had on board when she came into this port, which, I learn, was about 400 tons, from the ship then alongside of her in the bay.

The Shenandoah is a full-rigged sailing-vessel—steam is only auxiliary with her—and I cannot believe your excellency is aware of the large amount of coal now being furnished said vessel.

I have, &c.,
(Signed) WM. BLANCHARD.

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[78] [Inclosure 43 in No. 9.]

Statement of Michael Cashmore.

I, Michael Cashmore, of Melbourne, do solemnly declare:

That on or about the 2d day of this month (February) I went, in company with Mr. Lawrence Cohen, of the firm of Cohen Brothers, of this city, on board the confederate steamship Shenandoah, lying in Hobson's Bay; that while walking in the between decks I was hailed by name by a man in the uniform of the ship, who was sitting with other sailors taking soup. I recognized the man to be a late digger at Scarsdale. I asked him, "Hallo, how came you here?" He said, "I joined them this morning." I asked him if he thought it a better game than gold-digging. He replied, "The pay is nothing to boast of, but there is a chance of making a good deal in the shape of prize-money." I said, "It is a great change," and wondered how he would be able to stand it. He said it was nothing new, as he had been many years on board a British man-of-war. I have known this man several years, and believe him a Cornishman. I do not know his name, but I can readily identify him. Mr. Lawrence Cohen was near me during this interview, and can, no doubt, confirm this my statement.

MELBOURNE, *February* 16, 1865.
(Signed) MICHAEL CASHMORE.
Witness:
(Signed) WM. BLANCHARD,
United States Consul, Melbourne.

[Inclosure 44 in No. 9.]

Affidavit of John B. Lydserff.

I, John B. Lydserff, master of the brig Spree, of Melbourne, now in Hobson's Bay, do solemnly declare:

That about fourteen days ago I went on board the Shenandoah with a view to purchase a chronometer; that I inquired if the commanding officer was on board, and if he had any chronometers for sale; that I was then directed to a person in the uniform of an officer, who said he had. That said officer gave me choice of five or six; that I selected one numbered 960, Fletcher, Pentonville, London, for which I paid £15 sterling. That I paid the purchase-money to a person in the uniform of an officer of said Shenandoah, in the cabin of said ship; that I have a bill and receipt, but not with me at present.

(Signed) J. B. LYDSERFF.

Subscribed in duplicate before me, this 15th day of February, 1865, as witness my hand and seal of office.

(Signed) WM. BLANCHARD,
United States Consul, Melbourne.

[Inclosure 45 in No. 9.]

Mr. Blanchard to Governor Sir C. Darling.

CONSULATE OF THE UNITED STATES OF AMERICA,
Melbourne, February 17, 1865.

SIR: I beg leave to call your excellency's attention to the affidavits of John Williams, Walter J. Madden, Hermann Wicke, and Charles Bebrucke, the four impressed seamen from the Shenandoah, heretofore forwarded to you, showing that there have been shipped some ten or twenty persons on board said Shenandoah while in this harbor.

I also forwarded yesterday to the honorable the attorney-general a solemn declaration of Michael Cashmore, a highly respectable citizen of this place, showing that some fifteen days ago he was hailed by name by a person in uniform on board said vessel; that said person who hailed him was a late digger at Scarsdale, in this colony; that said person informed him he had joined that day, and that said person was taking his meals on board with the other sailors. Mr. Cashmore has informed me that neither of the four men who were arrested while escaping from said Shenandoah was the man who hailed him while on board said ship.

I also left the attorney-general a solemn declaration of John B. Lydserff, master of the brig Spree, of Melbourne, now lying in Hobson's Bay, showing the sale of
[79] *chronometers by the officers of said vessel while in this port, said chronometers being "prize," and the sale in violation of Her Majesty's proclamation.

I am compelled to protest against said vessel being allowed to depart with men furnished her in this port, whether the men are British subjects or others.

And I again protest against the aid and comfort now being extended to said vessel in this port.

I have, &c,
(Signed) WM. BLANCHARD.

[Inclosure 46 in No. 9.]

Testimony of Andrew Forbes.

I, Andrew Forbes, residing in Murphy's Cottages, Sandridge, do declare on oath:

That about 4 o'clock this day, while on the railway-pier at Sandridge, I saw Thomas Evans, Robert Dunning, Charles Bird, William Green, and little Sam, all inhabitants of Williamstown, most, if not all of them, British subjects, standing on the pier dressed better than usual; that I said to Thomas Evans, "What are you all doing over here?" That after some further conversation, said Thomas Evans said, "I suppose I need not be frightened to tell you." Said Evans then told me that he was going on board the bark Maria Ross, (then lying in the bay ready for sea,) with the others in his company, to join the Shenandoah, when said Shenandoah got outside the Heads; that the boats from the Maria Ross were to come to take them on board at 5 o'clock. He also said that there were many more beside his party going the same way.

(Signed) ANDREW FORBES.

Subscribed and sworn to in duplicate before me, this 17th day of February, 1865, as witness my hand and seal of office.

(Signed) WM. BLANCHARD.
United States Consul, Melbourne.

[Inclosure 47 in No. 9.]

Mr. Blanchard to Governor Sir C. Darling.

CONSULATE OF THE UNITED STATES OF AMERICA,
Melbourne, February 18, 1865.

SIR: I have the honor to inclose to your excellency the affidavit of Andrew Forbes, relative to the intending departure from this port of certain persons named therein to join the Sea King, *alias* Shenandoah, in violation of Her Majesty's neutrality proclamation.

Mr. Forbes came to my office at about 5 o'clock, p. m. yesterday. Seeing the necessity of immediate action in the matter, I took him at once to the Crown law-officers to lay information before the Crown solicitor, to whom I had previously been directed in a communication from the office of the attorney-general of the 11th of February, 1865, to take a witness.

It is with regret that I have to call your excellency's attention to the fact that while there, in my official capacity, I was most grossly insulted, by language and manner, by Mr. Garner, Crown solicitor, who positively refused to receive the information I was prepared to lay before that department of the Crown. In consequence the ends of justice have been defeated, and the neutrality of this port violated.

It is hardly necessary to acquaint you that I deem it my duty to send my Government a copy of this dispatch.

I have, &c.,
(Signed) WM. BLANCHARD.

[80] *[Inclosure 48 in No. 9.]

Mr. Warde to Mr. Blanchard.

PRIVATE SECRETARY'S OFFICE,
February 17, 1865.

SIR: I am directed by his excellency the governor to acknowledge the receipt of your letter of this date, and to acquaint in reply that a ship of war of either belligerent is, under Her Majesty's instructions, allowed to take in coal sufficient to carry such vessel to the nearest port of her own country or to some nearer destination.

I have, &c.,
(Signed) H. L. WARDE,
Private Secretary.

[Inclosure 49 in No. 9.]

Mr. Blanchard to Mr. McPherson, vice-consul, Hobart Town.

UNITED STATES CONSULATE,
Melbourne, February 18, 1865.

DEAR COLLEAGUE: I have received reliable information that the] Shenandoah, who has just left this port, is about to visit some of the quiet bays in your island. The officers of said vessel have been searching for a pilot who is acquainted with your coasts and bays. My opinion is that she intends coming there with a view to complete her equipment, she having much yet to do to make her formidable. She cannot fight the guns she has on board. Be therefore on the alert.

Yours respectfully,
(Signed) WM. BLANCHARD.

[Inclosure 50 in No. 9.]

Mr. Warde to Mr. Blanchard.

PRIVATE SECRETARY'S OFFICE,
February 20, 1865.

SIR: I am directed by his excellency the governor to acknowledge your letter of the 15th, and to inform you that his excellency is advised that it furnishes no ground for an alteration of the views respecting the presumed character of the ship Shenandoah which have been already communicated to you.

I have, &c.,
(Signed) H. L. WARDE,
Private Secretary.

[Inclosure 51 in No. 9.]

Mr. Blanchard to Mr. Lord.

MELBOURNE, *February* 20, 1865.

SIR: Will you please give me in writing an account of my interview held in your presence with the Crown solicitor, Mr. Gurner, on Friday last?

Yours truly,
(Signed) WM. BLANCHARD.

[Inclosure 52 in No. 9.]]

Mr. Lord to Mr. Blanchard.

MELBOURNE, *February* 20, 1865.

DEAR SIR: Yours of this date is received, requesting me "to give you an account of an interview held in my presence between you and Mr. Gurner, Crown solicitor, on Friday last." In reply, you must allow me to state the whole occurrences of the afternoon in connection with the affair of shipping men for the Shenandoah, which were simply these:

While in your office, about 5 o'clock p. m., a man came in out of breath, asking to

see the United States consul, saying he had run most of the way from Sandridge, to report to you that there were a large number of men, many of his acquaintances, that were about going on board the bark Maria Ross (then lying in the bay ready
[81] *to sail) with the intention of shipping on board the Shenandoah, which vessel also was about leaving port. You stated that as the information was important and urgent, you would at once take the man to the Crown solicitor's office, where you had previously been directed by the attorney-general to take similar information. You at once took a conveyance and drove to the Crown law-officers. As we stopped at the gate we saw Mr. Gurner, with one of the employés of the office, coming down the yard from the door; he on seeing us turned partly round and gave, in an undertone, some direction to this employé, which I did not hear. On our entering the gate, Mr. Gurner and this employé stopped half-way down the yard, and on our attempting to pass them to go into the building, were accosted by the clerk, who said there was no one in, or something to that effect. When I said we should then have to trouble Mr. Gurner, as the business was urgent, and introduced you as the United States consul to Mr. Gurner, the Crown solicitor; he, without noticing or acknowledging you, said very tartly that he was going to his dinner, and could not be detained, when you replied, "I come as the representative of the United States, with evidence to lay before you, the Crown solicitor, of a large number of men about violating the neutrality laws of the country," at which he replied in a sneering and most insulting manner. "I don't care; I want my dinner, and I am going to have it; there are plenty of magistrates round town; go to them;" when I, seeing that you felt bitterly the insulting manner of Mr. Gurner, and wishing to spare you a continuation of it, said, "Let us then go and see the attorney-general." Mr. Gurney turned his back on us and walked off. When outside of the gate, and about a dozen paces down Collins street, he turned and called out, "My dinner, my dinner! Lord, that is what I want." We left and went first to the office of the chief commissioner of police, and not finding either him or Mr. Lyttleton in, we drove to the houses of Parliament, and on sending your name to the attorney-general, he at once came out and asked us into the side room; he patiently listened to all you had to say, and then suggested that if you would place the matter in the shape of an affidavit, he would lay it before his colleagues; that a verbal statement was not sufficient for the government to proceed upon. We then left and drove to the office of the detective police, and saw Mr. Nicholson, the chief, who heard the man's statement in full, but as he could not act without a warrant, advised us to go to the police magistrate, Mr. Sturt, and get a warrant; then he would at once act upon it. Leaving there, we went to the residence of Mr. Sturt, in Spencer street, who received you very politely, listened to what you had to say, examined the man, but stated that he could not take the responsibility of granting a warrant on the evidence of this man alone, and advised your going to Williamstown to Mr. Call, who, perhaps, would be in possession of corroborative testimony through the water-police. We then left, and it being about half past 7, and you finding such a disinclination in any one to act in the matter, decided to take the deposition yourself, and send it to the attorney-general, leaving it to the government to take such action on it as it might deem proper. Going to your consulate, the deposition was taken, and a copy inclosed to the attorney-general, with a request for me to deliver it.

I took it to the houses of Parliament, which I found closed, and it being then late, about 9, I decided it was too late to stop the shipment of the men, as we understood the vessel was to leave at 5, and I went home, and returned the letter to you on Saturday morning. Previous to going home, however, I again went to the detective office, saw Mr. Nicholson, told him how you had been prevented from getting the evidence before the government in the shape they required it. He expressed his regret, but could not act in so important a matter without a warrant.

I have thus given you, as near as I can recollect, the occurrences as they took place at the time you mention, and, as I believe, nearly word for word as they were uttered: and I remain, &c.,

(Signed) SAM'L P. LORD.

[Inclosure 53 in No. 9.]

Mr. Warde to Mr. Blanchard.

PRIVATE SECRETARY'S OFFICE,
Melbourne, February 21, 1865.

SIR: I am desired by his excellency the governor to acquaint you that he received your letter of the 18th instant, in the afternoon of that day, Saturday, and that on Monday, the 20th, he caused it to be referred, through the honorable the attorney-general, to the Crown solicitor, for any explanation he might wish to offer.

2. After stating that it was only in consequence of his accidentally returning

[82] to his *office at half past 5 p. m., after it had been closed for the day, that the interview between you and himself occurred at all, Mr. Gurner states that he informed you that not being a magistrate he could not take an information, and adds that he was in a hurry to save a railway train, and, therefore, left more suddenly than he otherwise should have, but he positively asserts that neither in manner or language did he insult you.

3. His excellency feels sure that the Cown solicitor's tone and manner have been misapprehended, and confidently assures you that there was no intention on the part of that officer to fail in the respect due to your position as the consul of the United States of America.

I have, &c.,

(Signed) H. L. WARDE, *Private Secretary.*

[Inclosure 54 in No. 9.]

Extract from the Argus of February 17, 1865.

THE SHENANDOAH AFFAIR.—The complications in which the confederate war-steamer Shenandoah is involved have, it is true, been brought to an end so far as practical interference with the vessel is concerned, but the political and moral questions have been by no means unraveled.

Some correspondence which we print below will throw a little light on the affair, and perhaps enable our community to form an opinion for themselves as to the action taken by our local government.

The main points in dispute can hardly be succinctly stated, but arise in the course of the various considerations involved. But we must first give a history of what has not yet reached our readers.

Wednesday morning, it will be remembered, found the ship still on the government slip, the manager of the slip refusing to obey the express instructions of her captain to have her launched, giving as his reason that he was ordered by the government not to let the launch proceed. The slip was then in the hands of the police, whose instructions were to prevent its use for the launch of the Shenandoah "at all hazards."

On the previous evening Captain Waddell had received a letter from the commissioner of trade and customs for Victoria, intimating that the facilities hitherto afforded the Shenandoah would be suspended on account of the alleged refusal by the commander to allow a magistrate's warrant for the arrest of one "Charlie," said to be on board, to be executed.

To that letter the captain replied with another, denying that execution of the warrant had been refused, and stating that permission to the police to search the ship had been denied as contrary to the dignity of the confederate flag; that the vessel had been searched twice, and no "Charlie" found, and that absolutely no one had been shipped in these waters; and finally protesting against any obstruction which would cause the detention of the vessel.

On Wednesday morning, then, finding his vessel still fast on the cradle of the government slip, and that the government had taken measures to prevent its removal, Captain Waddell sent his second lieutenant to Mr. Francis with this letter:

"CONFEDERATE STATES STEAMER SHENANDOAH,
"*February* 15, 1865.

"SIR: I am informed by the manager of the slip upon which the Confederate States steamer Shenandoah now rests, that the slip has been seized by authority from his excellency the governor, to prevent the launching of the Confederate States steamer Shenandoah, which of necessity is a seizure of the vessel under my command. I therefore respectfully beg to be informed if this seizure is known to his excellency the governor, and if it meets his approval.

"Very respectfully,

(Signed) "JAMES J. WADDELL,
"*Lieutenant Commanding, Confederate States Navy.*

"The Hon. the COMMISSIONER OF TRADE AND CUSTOMS."

At 2 p. m. the same day a proclamation (published in yesterday's Argus) was made by his excellency the governor, revoking the "suspension of facilities" so far as the launch was concerned, and the following letter was addressed to Captain Waddell:

[83] * "CUSTOM-HOUSE, *Melbourne, February* 15, 1865.

"SIR: In acknowledging your letters of yesterday's date, and also in reply to your communication of this morning, I am instructed by his excellency the governor to inform you that the lessee of the patent slip having reported that the safety of the

ship Shenandoah may be endangered by her present position on the slip, the suspension of permission to British subjects to assist in launching the ship is withdrawn; while the further matters referred to in your letters are under consideration, and will be replied to with as little delay as possible.

"I have, &c.,
(Signed) "JAS. G. FRANCIS.

"J. J. WADDELL, Esq.,
"*Lieutenant Commanding, Confederate States steamer Shenandoah.*"

Accordingly, the vessel was launched, and taken to a spot midway between Williamstown and Sandridge, where she now lies. At a late hour, after 11 o'clock that night, the following letter was received by the commander of the Shenandoah:

"CUSTOM-HOUSE, *Melbourne, February* 15, 1865.

"SIR: I am directed by his excellency the governor to further acknowledge your communications of the 14th and 15th instant, in which, alleging that the vessel under your command had been seized, you ask whether the seizure is known to his excellency the governor, and if it meets his approval.

"I am to inform you, in reply, that this government has not directed or authorized the seizure of the Shenandoah.

"The instructions to the police were to see that none of Her Majesty's subjects in this colony rendered any aid or assistance to, or performed any work in respect of, your vessel during the period of the suspension of the permission which was granted to you to repair and take in supplies, pending your reply to my letter of yesterday's date, in regard to a British subject being on board your vessel, and having entered the service of the Confederate States, in violation of the British statute known as the foreign-enlistment act, and of the instructions issued by the governor for the maintenance of neutrality by Her Majesty's subjects.

"In addition to evidence previously in possession of this government, it has been reported by the police that about 10 o'clock last night four men, who had been in concealment on board the Shenandoah, left the ship, and were arrested immediately after so leaving by the water-police.

"It appears from the statements of these men, that they were on board your vessel both on Monday and Tuesday, the 13th and 14th instant, when their presence was denied by the commanding officer in charge, and by yourself subsequently, when you declared that there were 'no persons on board this ship except those whose names are on our shipping-articles.' This assertion must necessarily have been made by you without having ascertained for yourself, by a search, that such men were not on board, while at the time you refused permission to the officer charged with the execution of the warrant to carry it into effect.

"Referring to that portion of your communication of the 14th instant in which you inform his excellency the governor 'that the execution of the warrant was not refused, as no such person as the one therein specified was on board,' I am in a position to state that one of the four men previously alluded to is ascertained to be the person named in the warrant.

"I am also to observe that, while at the moment of the dispatch of your letter it may be true that these men were not on board the Shenandoah, it is beyond question that they were on board at the time it was indited, your letter having been dispatched five minutes before 10 o'clock.

"It thus appears plain, as a matter of fact, that the foreign-enlistment act was in course of being invaded.

"Nevertheless, as the only person for whose arrest a warrant was issued has been secured, and as you are now in a position to say, as 'commanding officer of the ship, and on behalf of your government, whose faith is pledged by the assurance, that there are no persons on board except those whose names are on our shipping-articles, and that no one has been enlisted in the service of the Confederate States since my arrival in this port,' his excellency the governor has been pleased to revoke the directions issued yesterday, suspending permission to British subjects to aid and assist you in effecting the necessary repairs and taking in supplies.

[84] "I am to add, it is expected you will exercise every dispatch, so as to insure your departure by the day named in your first letter of yesterday, viz, Sunday next.

"I have, &c.,
(Signed) "JAS. J. FRANCIS.

"J. J. WADDELL, Esq.,
"*Lieutenant Commanding, Confederate States steamer Shenandoah.*"

It was too late to reply that night, but the next morning the following reply wsa forwarded to the government:

"CONFEDERATE STATES STEAMER SHENANDOAH.
"*Hobson's Bay, February* 16, 1865.

"SIR: I am in receipt of your communication of yesterday's date, and desire to convey through you to his excellency the governor my appreciation and thanks for his observance of the rights of belligerents; and further to assure his excellency the governor that every dispatch is being made by me to get the Shenandoah to sea at the earliest possible moment.

"The four men alluded to in your communication are no part of the vessel's complement of men; they were detected on board by the ship's police after all strangers were reported out of the vessel, and they were ordered and seen out of the vessel by the ship's police immediately on their discovery, which was after my letter had been dispatched informing his excellency the governor that there were no such persons on board. Those men were here without my knowledge, and I have no doubt can very properly be called stowaways; and such they would have remained but for the vigilance of the ship's police, inasmuch as they were detected after the third search; but in no way can I be accused, in truth, of being cognizant of an evasion of the foreign-enlistment act.

"In conclusion, sir, allow me to inform you that I consider the tone of your letter remarkably disrespectful and insulting to the government I have the honor to represent, and that I shall take an early opportunity of forwarding it to the Richmond government.

"Very respectfully,
(Signed) "JAMES J. WADDELL,
"*Lieutenant Commanding, Confederate States Navy.*

"The Hon. the COMMISSIONER OF TRADE AND CUSTOMS."

In consequence of the permission granted in Mr. Francis's last letter, coaling was proceeded with, and yesterday over two hundred tons and a quantity of stores were put on board. Officers and men were all intensely busy, and coal-dust seemed to fill the atmosphere. It will take at least two days more to properly complete the stores, but yet it is not absolutely certain that Captain Waddell will wait for that.

Before quitting the subject, it will be well to give a few statements in respect to the aspect of affairs. It is evident from Mr. Francis's last letter, that the government claim to have permitted the launch because "Charlie" had been taken, while Captain Waddell claims that such a course was forced on them by his threat to accept the detention of the vessel on the government slip as a seizure. This is certainly a moot point. Captain Waddell's explanation of "Charlie's" discovery is, to say the least, a highly natural one, especially as the fact of the arrest of the four men does not appear to have reached the Shenandoah, so jealously is she guarded, till Wednesday night. He says that a remark made by one of his men and reported to him after it had gone through several hands, first aroused his suspicion that the two searches made had not been complete.

One of the men had been heard to say that he knew where a man was, and thereupon a third search was ordered, and the four men discovered. They were ordered ashore directly, Captain Waddell not thinking it worth while to hand them over to the police, seeing that the men were sent into the waterman's boat under the nose of the water-police, and that rows of armed constables flanked the vessel on each side, and patrolled on long platforms running within ten feet of the ship. In his last letter he has, in his opinion, closed his correspondence with the government, and to his friends he has asserted that, in the whole course of his twenty-one years' experience in the navy of his country, he never knew of communications on these subjects between a vessel of war and anybody but the representative of the imperial government. It is not improbable that, had the communications been between the commander and his excellency, that Mr. McCulloch would scarcely have ventured on his assertion to the legislative assembly, that a foreign vessel of war had been "ordered" to leave the port.

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[85] *[Inclosure 55 in No. 9.]

Extract from the Herald of February 20, 1865.

The confederate cruiser Shenandoah left Hobson's Bay about 6 a. m. on Saturday, and was seen, during the afternoon, outside the Heads, by the schooners Sir Isaac Newton and Zephyr.

She steamed up to the former and hoisted an English ensign, which, on being answered with a like flag, she stood off again. When the Zephyr saw her at a later hour of the day she was hove-to off Cape Schanck. Several rumors are afloat that the

Shenandoah shipped or received on board somewhere about eighty men just prior to leaving. We have since been informed that she took away a large number, but not equal to that above stated.

[Inclosure 56 in No. 9.]

Extract from the Argus of February 20, 1865.

We may now speak of the confederate war-steamer Shenandoah as something that has come and gone. With all the sympathy we may have had with her as the representative of those who are gallantly fighting against long odds, she, in the fulfillment of a warlike errand, was most unwelcome in our still peaceful port, and we are unfeignedly glad of her departure. She left before the time named to our local government by her commander, when the demand was made that the period of her leaving should be fixed at as early a date as was possible, but Captain Waddell was anxious to be better than his word. Before the detention on the government patent slip, he promised to be away, if possible, by Sunday, and, by dint of working double tides, night and day, he managed to steam away shortly after daybreak on Saturday last. At first she started at half speed, and fired a gun or so, to give notice of her departure, but nothing followed, and we are informed that she passed Gellibrand's Point at full speed, and was quickly out of sight. Her machinery was little more than patched up, for it was nearly imperative that the pinion nearest the screw-shaft should be renewed, but Messrs. Langlands & Co. made a good job of their repairs, and the ship has, consequently, considerable speed. Our latest news of her represent her as having cleared the Heads at noon, steering southwest for about twenty miles, when she altered her course to south, and was lost sight of in a thick mist at half past 2 p. m. Of the various ridiculous stories that are told of the circumstances that attended her departure, we shall only contradict one, viz, the reported arrival on board, at 2 a. m. on Saturday morning, of Captain Semmes, late of the Alabama, said to have arrived under a feigned name in the Great Britain. That remarkably enterprising and gallant commander is, we are informed by those most likely to know, by this time in the Confederate States, his health having been seriously impaired by the energy and zeal which characterized the performance of his mission, and the effects of his submersion after the engagement between the Alabama, Confederate States navy, and the Kearsarge, United States Navy. It is not to be denied, however, that during Friday night a large number of men found their way on board the Shenandoah, and did not return on shore again. It is not improbable yet that we shall have further news of the Shenandoah.

[Inclosure 57 in No 9.]

Extract from the Herald of February 20, 1865.

The confederate ship Shenandoah, Captain Waddell, got up steam and left Hobson's Bay at 6 o'clock on Saturday morning. During her stay in port several repairs have been effected, and a quantity of provisions and coals have been shipped.

There is no doubt that she has taken away with her several men from this colony, report says eighty, but that is probably an exaggeration.

The neglect of the attorney-general, in not replying to Captain Waddell's questions as to the extent of the neutral limit, has apparently absolved that commander from responsibility, so far as carrying on hostile operations outside Port Phillip's Heads is concerned; for, according to our shipping report, the Shenandoah steamed up to the
[86] *schooner Sir Isaac Newton, evidently with the intention of overhauling her had she happened to be a Yankee vessel.

[Inclosure 58 in No. 9.]

Extract from the Age of February 20, 1865.

The Shenandoah left Hobson's Bay at 6 o'clock on Saturday morning. It is currently reported that she shipped some eighty men just prior to leaving. At a late hour on Saturday she was hove-to off Cape Schanck.

The police on Saturday received the following information relative to an attempt made to enlist men for the confederate service on board the confederate steamer Shenandoah.

About half-past 4 o'clock on Saturday afternoon a man, who gave his name and address as George Kennedy, 125 Flinders Lane, East, called at the police-office in Russell street, and stated that having seen an advertisement in the Argus, he called on the advertiser, "Powell," with whom was another man whose name he did not know. He remained in their company for several hours, during which time they supplied him with drink, and endeavored, by every kind of persuasion, to induce him to join the confederate service on board the Shenandoah, for which purpose they also conducted him to the wharf, and desisted from their efforts only when he openly stated his intention of reporting the matter to the authorities.

Kennedy further stated that when the men were using their endeavors to get him to join the Shenandoah, there were several other persons present who accepted their offers, and whom he now believes to be on board that vessel.

A warrant has been issued by the Melbourne bench for the apprehension of the offenders.

[Inclosure 59 in No. 9.]

Testimony of Edward P. Nichols, second mate of the late bark Delphine.

I, Edward P. Nichols, do solemnly declare that I am a citizen of Searsport, Maine, and have sailed on board bark Delphine, from the 23d day of March, 1861, up to the 29th day of December, 1864.

That she sailed from Gravesend on the 12th October, 1864, bound to Akyab.

That everything went on well till the 29th of December, when we saw a ship on our lee-bow, steering a little more to the southward than we were. As we came up with her, she had every appearance of a merchant-ship. After awhile she hoisted the English ensign, and we hoisted the American ensign. She being very near in our course, we ran across her stern, and, as we opened out to leeward, we saw her guns. She then fired a gun, and hoisted the confederate flag, having hauled down the English flag a short time before.

That we immediately hove-to; that they then sent a boat to us with two officers and boat's crew; that one officer went to Captain Nichols and asked him to show his papers; that, after looking at the papers, he sent the captain and first mate on board the steamer with the other officers, leaving an officer and one man on board, armed with cutlass and revolvers.

That Captain Nichols was brought back, with orders to pack up his clothes, and all on board were ordered to do the same.

That they took all cabin stores, liquors, charts, nautical books, and instruments, and sent them on board of the steamer, with all hands that belonged to the Delphine. They then set fire to the Delphine, and that is the last I know of her.

That after I got on board of the Shenandoah, as they said she was called, we were (the captain, mate, and myself) told to sign a parole not to bear arms, or do anything against the confederate cause.

That two days before we landed we had a second parole brought for us to sign, with an addition to the first, that we would give no information that we might have gained while on board, and was told that that meant if we knew where she was going to keep it quiet; but I will say this, and not break the parole, that her life-buoy had the name Sea King, and that her knives, forks, spoons, all bore the name Sea King.

[87] That I heard the officers say she was out on this coast (Australia) last year with troops.

That I heard the officers say, when they heard the report that was in the papers, stating that the Sea King ran on a rock and was lost, "a sharp man that fellow, but she is not lost yet, for here she is going into Melbourne under the name of Shenandoah."

(Signed) EDWARD P. NICHOLS,
Second Mate of the late barque Delphine.

Subscribed and sworn to before me in duplicate this 3d day of February, 1865, as witness my hand and seal of office.

(Signed) WM. BLANCHARD,
United States Consul.

[Inclosure 60 in No. 9.]

Testimony of Edward T. Lingo.

I, Edward T. Lingo, of Saint Louis, Missouri, do solemnly declare on oath:

That I shipped as steward, with my wife as stewardess, on the 1st day of October, 1864, on board the American barque Delphine, in London, England; that I sailed in

said capacity on board said barque from London on the 12th October, 1864; that nothing unusual occurred until the 29th day of December, 1864, when we fell in with a steamship flying the English ensign; said steamer fired a blank shot for us to heave-to, at the same time lowering the English ensign and hoisting a confederate flag; that the said barque was then boarded by an officer in uniform from a boat from said steamer, the two officers of which boat were armed; that the said boarding officer, who I afterward learned was named Bullock, ordered Captain Nichols and the first mate to take all the ship's papers, and go on board said steamer; that Captain Nichols and the mate did so, said Bullock taking charge of said barque during their absence; that afterward said Bullock ordered all hands to pack up and go on board said steamer, which order I and my wife and all hands obeyed; that after going on board said steamer I was told by Mr. Whittle, first lieutenant, that I could take my choice either to remain in the cabin of said steamer, wait on Mr. and Mrs. Nichols and others, or go in irons; that I then consented to serve as he said, to avoid punishment; that I remained on board said steamer, serving as aforesaid, until the steamer arrived in the port of Melbourne, when I signed a parole, and was then allowed to come on shore.

(Signed) E. T. LINGO.

Subscribed and sworn to in duplicate before me this 11th day of February, 1865, as witness my hand and seal of office.

(Signed) WM. BLANCHARD,
United States Consul.

[Inclosure 61 in No. 9.]

Testimony of Mary Lingo.

I, Mary Lingo, wife of Edward T. Lingo, of Saint Louis, Missouri, and stewardess on board late bark Delphine, do declare on oath:

That I shipped as stewardess on board Delphine, in London, on the 1st October, 1864; that I sailed from London in the said bark about the 12th October, and that nothing unusual occurred until the 29th December, 1864, when the said bark was boarded by armed men from a steamer, and I with the rest of the crew was ordered on board said steamer by a person in uniform, who I afterward learned was Mr. Bullock, an officer of the Confederate States of America; that upon going on board said steamer I learned first from a boy called James, on board, that said steamer was called Shenandoah, and that she sailed from London as Sea King; that I found Sea King on the plate and table-cloth; that I have now with me a knife marked "Sea King," also a fork marked "Sea King," which I brought from said vessel when I left her in the port of Melbourne on the 26th January, 1865, and which I now produce.

(Signed) MARY LINGO.

Subscribed and sworn to in duplicate before me this 16th day of February, 1865, as witness my hand and seal of office.

(Signed) WM. BLANCHARD,
United States Consul.

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[88] [Inclosure 62 in No. 9.]

NEWSPAPER EXTRACTS, &c.

From the Herald of January 26, 1865.

A Confederate war-steamer in Hobson's Bay.—Considerable interest was manifested yesterday morning in the city by an announcement posted at the telegraph office that the auxiliary screw-steamer Royal Standard had been signaled off Cape Otway, after an extraordinary run of fifty-two days from Liverpool. The news was speedily promulgated through the city, and the arrival of the vessel in Hobson's Bay was anxiously looked forward to. Late in the afternoon, when the steamer had arrived at Port Phillip Heads, a telegram was received by the chief secretary, announcing that the steamer reported was not the Royal Standard, as supposed, but the confederate man-of-war Shenandoah, of eight guns. The vessel at once proceeded up the channel, and anchored in the bay at a few minutes before 7 o'clock, flying the confederate flag. The intelligence that a vessel of the confederate navy had arrived in our waters was speedily made known, and several boats put off to the Shenandoah, but Captain Waddell, her commander, positively declined to allow any person to come on board until such time as he had communicated with the shore. As soon as possible Lieutenant

Grimble, one of the officers, was dispatched to Toorak to wait upon his excellency, the governor, and request that the vessel might remain for a certain period in neutral waters, for the purpose of coaling and repairing her machinery.

The Shenandoah is a steam-vessel of 1,160 tons, 240 horse-power, and carries eight large guns. She is commanded by Captain James Waddell, and the following is a list of her officers: Lieutenants, W. C. Whittle, John Grimble, J. S. Lee, F. T. Chew, D. M. Scales; master, J. M. Bullock; chief engineer, M. O'Brien; surgeon, C. E. Lining; acting paymaster, W. B. Smith; passed midshipmen, O. A. Brown and J. T. Mason; assistant surgeon, E. F. McNutty; assistant engineers, W. H. Codd, J. Hutchinson, E. Muggofery; master's mates, C. E. Hunt, J. F. Miner, L. Calbon; boatswain, G. Harwood; carpenter, J. O'Shea; gunner, J. L. Guy; sailmaker, Henry Ollcott; second carpenter, John Lynch. In addition to these officers, she has a crew of seventy-five men.

The Shenandoah has been at sea since the 15th of October last, and during that time she reports having captured and burned no less than eleven Federal merchantmen. The crew of the Shenandoah has been partly made up from the men on board the various prizes. The men are a fine and determined looking set of fellows. The uniform worn is a sort of yellowish gray, with a shoulder-strap of blue silk bearing a single star, surrounded by a thin gold cording. The cap is also gray, with a broad gold band.

The Shenandoah, we believe, has been off the Australian coast for the last ten days, and on her arrival off the Otway yesterday, she failed to run up any colors, as the captain did not wish to be reported by the vessels going out. We believe that under a recent proclamation the Shenandoah will not be allowed to remain in the port more than forty-eight hours.

From the Argus of February 23, 1865.

Since October last the history of the Shenandoah has been an eventful one. There is no doubt she is identical with the Chinese Clyde-built steam-clipper Sea King, noted for her speed, and which, when she brought troops to Auckland last year, made one of the shortest trips on record. As far as we can gather, the transformation of an English merchant-steamer into a Confederate States man-of-war took place thus:

The Laurel blockade-runner started from Liverpool with a cabin full of "likely-looking young men," as the pilot called them, on the 8th of October last, and Friday, the 14th, saw her in Funchal Bay, Madeira.

The passengers did not go on shore, and were believed by the Madeira folks to be Polish emigrants. Three days afterward a large steamer, ship-rigged, steamed in and then out the harbor, the Laurel following to the east side of the island, both flying British colors. Here it is said the strange ship was purchased for £45,000, and the passengers and cargo of the Laurel transferred to her.

The Laurel then went her way, and the strange steamer stood out to sea, none of the packages brought by the Laurel being broken. When beyond the neutral marine league from shore, Captain Waddell summoned the men aft, and read his commission as commander of the confederate sloop-of-war Shenandoah, ordered to cruise and
[89] destroy the enemy's commerce. At that time twenty-five men constituted the whole crew, a number which, deducting officers, left five men in each watch.

To put his ship in order and arrange its armaments, were the first things Captain Waddell set about doing. Sailing by day, and steaming by night, the ship, now called the Shenandoah, was taken to a quiet place in the trades, and there, comparatively secure from the enemy's cruisers, men and officers set to work with a willing mind to get her into trim. This done, the Shenandoah entered on her functions, selecting for her cruising-ground the track of vessels bound for the South American ports. Success attended her. Her plan was, when she crossed a vessel to show English or French colors and fire a gun; after which, if the other proved to be a Yankee, she was taken and destroyed, and her captain and crew made prisoners. The following is a correct list of the vessels captured and destroyed by the Shenandoah:

Alina, bark, Staples master, from Akyab to Buenos Ayres; cargo of railway iron. Scuttled 29th October, latitude 16° 47′ north, longitude 16° 43′ west.

Charter Oak, schooner, Gillman master, from Boston for San Francisco; assorted cargo. Burned 5th November, latitude 7° 38′ north, longitude 27° 49′ west.

De Godfrey, bark, Hallet master, from Boston to Valparaiso; assorted cargo. Burned 7th November, latitude 6° 28′ north, longitude 27° 6′ west.

Susan, brig, Hansen master, from New York to River Plate. Scuttled 10th November, latitude 4° 20′ north, longitude 26° 39′ west.

Kate Prince, for Bahia, neutral cargo. Ship bonded the 12th November.

Adelaide, bark, of Baltimore, to River Plate; neutral cargo. Ship bonded for $23,000.

Lizzie M. Stacy, schooner, New York to Sandwich Islands; assorted cargo. Burned 13th November, latitude 1° 40′ north, longitude 28° 24′ west.

Edward, whaling vessel. Burned 4th December, latitude 37° 47′ south, longitude 12° 30′ west.

Delphine, bark, from London for Akyab. Burned 29th December, latitude 29° 10′ south, longitude 69° east.

The larger portion of the sailors taken prisoners volunteered to join the Shenandoah and were accepted; the remainder, all but a few, were transshipped to other vessels met with on the high seas. The remnant were eight men besides Captain Nichols of the Delphine, and wife and stewardess, who were brought hither. Unassisted, but unimpeded, they made their way out of the Shenandoah very shortly after the vessel's arrival in Hobson's Bay, and before permission to land them, for which application was made to the government, could be afforded.

* * * * * * *

About this time, and in answer to a hint from the government respecting the need of an early departure, Captain Waddell addressed the government thus in one of his letters:

"I am extremely anxious to get the Shenandoah to sea. The procrastination by the parties employed under his excellency the governor's permission for the necessary repairs to this ship seems to me unnecessary, and if I appeal to his excellency the governor for further instructions to those employed to hurry up the work on this ship, I hope his excellency the governor will see it in the spirit of a law-abiding man, and one impatient to be about his country's business."

The government by their action appeared to admit the necessity of the delays, and not till twelve days after the ship had been in port asked that a day should be named for her departure. Captain Waddell again replied that the delays were caused by the difficulty of getting the ship on the slip, and the notorious effects of some severe gales, which once caused the Shenandoah to get adrift, and nearly occasioned very serious damage.

These reasons were apparently admitted to be good, and eventually, on the 14th February, Captain Waddell announced to Mr. Francis that he expected to get at sea by the Sunday following. Hitherto the only public expression of ill-feeling emanated from Mr. Berry, a member of our lower house of legislature. In his place in the legislative assembly, he called the attention of the government to the subject, stating that the Shenandoah, being in reality the Sea King, and an English vessel, should be seized under the neutrality proclamation. In reply the chief secretary pointed out that there was nothing which could be accepted as proof of the honorable member's assumption, and Mr. Berry received an unmistakable snubbing at the hands of several other members of the house, including Mr. O'Shannassy, whose remark that Mr. Berry might as well have let the matter alone, was cheered in all parts of the house.

* * * * * * * *

[90] *The instructions given to the police will be best described in the following telegram:

Telegram from Mr. Standish, chief commissioner of Victorian police, to Mr. Bearer, police inspector stationed at Williamstown.

"I have to direct that you communicate with Mr. Chambers, the lessee of the patent slip, that the governor in council has given direction that he and all other British subjects in this colony at once desist from rendering any aid or assistance, or perform any work in respect to the said classed confederate ship Shenandoah, or in launching the same. You will at once proceed with the whole of the police at your disposal to the patent slip, and prevent, at all risks, the launch of said ship. Superintendent Lyttleton and fifty men, also fifty of the military, proceed at once to Williamstown, telegraphing anything that may occur direct to me.

(Signed) "F. C. STANDISH.

"TUESDAY, *February* 14, 1865."

The military, fifty men of the royal artillery, started, but were countermanded. When affairs were at this stage, Captain Waddell received a letter from Mr. Francis, on behalf of the government, charging him with having refused permission to execute the warrant, and calling upon him to reconsider his determination, pending which the permission granted to repair and take supplies was suspended.

Captain Waddell at once replied that the execution of the warrant had not been refused, but only permission to "search" the ship, whose deck represented the majesty of the flag that flew over it. He added, moreover, that the shipping-articles had been exhibited to show that no one had shipped while the vessel was in port, and that he had ordered two commissioned officers to search the ship, but they had found no strangers. He concluded by entering, in the name of his government, his solemn protest against any obstructions that would cause the detention of his ship. The day's proceedings were closed by the captain giving orders for the launch of his ship early next morning.

An episode occurred here that belongs to this narrative. At a few minutes after 9 p. m. on that evening, the police who were stationed all round the vessel, and within a very few yards of her, saw four men come down the gangway into a boat alongside. The water-police close by followed this boat, which was rowed swiftly away, but the end was that the four men were arrested on shore, and subsequently identified by some deserters as men whom they had seen concealed on board, one being the identical "Charlie."

Next day they were brought before a magistrate, and remanded until the following day, Thursday.

Meanwhile, on Wednesday morning, Captain Waddell finding that the launch of his vessel, which was securely fast on the patent slip, was prevented by the order of the government, wrote at once to Mr. Francis, declaring his vessel to be seized, and asking if the governor approved of this.

At 45 minutes past 1 o'clock on the same day the governor by proclamation revoked the prohibition of the launch, and a letter from Mr. Francis to Captain Waddell intimated that as it was reported that the safety of the ship was endangered by her position on the slip, the suspension of the permission to British subjects to assist in the launch was withdrawn. In consequence the ship was launched the same evening.

Late at night Captain Waddell received the following communication:

"CUSTOM-HOUSE, *Melbourne, February* 15, 1865.

"SIR: I am directed by his excellency the governor to further acknowledge your communication of the 14th and 15th instant, in which, alleging that the vessel under your command has been seized, you ask whether the seizure is known to his excellency the governor, and if it meets his approval.

"I am to inform you in reply that this government has not directed or authorized the seizure of the Shenandoah.

"The instructions to the police were to see that none of Her Majesty's subjects in this colony rendered any aid or assistance to, or performed any work in respect of, your vessel during the period of the suspension of the permission which was granted to you to repair and take in supplies, pending your reply to my letter of yesterday's date, in regard to a British subject being on board your vessel, and having entered the service of the Confederate States in violation of the British statute known as the foreign-enlistment act, and of the instructions issued by the governor for the maintenance of neutrality by Her Majesty's subjects.

[91] "In addition to evidence previously in the possession of this government, it has been reported by the police that about 10 o'clock last night, four men who had been in concealment on board the Shenandoah, left the ship, and were arrested immediately after so leaving by the water-police.

"It appears from the statements of these men, that they were on board your vessel both on Monday and Tuesday the 13th and 14th instant, when their presence was denied by the commanding officer in charge, and by yourself, when you declared that there were 'no persons on board this ship, except those whose names are on our shipping articles.'

"This assertion must necessarily have been made by you without having ascertained for yourself by a search that such men were not on board, while at the time you refused permission to the officer charged with the execution of the warrant to carry it into effect.

"Referring to that portion of your communication of the 14th instant, in which you inform his excellency the governor 'that the execution of the warrant was not refused, as no such person as the one therein specified was on board,' I am in a position to state that one of the four men previously alluded to is ascertained to be the person in the warrant. I am also to observe that while at the moment of the dispatch of your letter it may be true that these men were not on board the Shenandoah, it is beyond question that they were on board at the time it was indicted, your letter having been dispatched at 5 minutes before 10 o'clock.

"It thus appears plain, as a matter of fact, that the foreign-enlistment act was in course of being evaded.

"Nevertheless, as the only person for whose arrest a warrant was issued has been secured, and as you are now in a position to say as commanding officer of the ship and on behalf of your government, whose faith is pledged by the assurance, that there are no persons on board this ship, except those whose names are on our shipping articles, and that no one has been enlisted in the service of the Confederate States since my arrival in this port, his excellency the governor has been pleased to revoke the directions issued yesterday, suspending permission to British subjects to aid and assist you in effecting the necessary repairs and taking in supplies.

"I am to add it is expected you will exercise every dispatch so as to insure your departure by the day named in your first letter of yesterday, viz, Sunday next.

(Signed) "JAS. G. FRANCIS.

"J. J. WADDELL, Esq.,

"*Lieutenant Commanding, Confederate States Steamer Shenandoah.*"

To this Captain Waddell replied, next day, by thanking his excellency the governor for his observance of the rights of belligerents, denying that the men arrested formed any part of his complement, but were stowaways, detected after a further search and at once ordered over the side, and declaring that in no way could he be accused of an evasion of the foreign-enlistment act. He ended thus, addressing Mr. Francis: "In conclusion, sir, allow me to inform you that I consider the tone of your letter remarkably disrespectful and insulting to the government I have the honor to represent, and that I shall take an early opportunity of forwarding it to the Richmond government."

This closed the correspondence between Captain Waddell and the government.

[From the Herald of February 23, 1865.]

LEGISLATIVE COUNCIL.

WEDNESDAY, *February* 22, 1865.

The president took the chair at 12 minutes past 4 o'clock, and read the usual form of prayer.

THE SEIZURE OF THE SHENANDOAH.—MR. HIGHETT'S MOTION.

Mr. Highett, pursuant to notice, moved that an address be presented to the governor, praying that his excellency would cause to be laid on the table of the house copies of any instructions received from the home government relative to the reception and treatment of ships of war of foreign nations visiting this port, more especially in relation to those of belligerent powers. He said that the correspondence which had recently taken place between the government and the commander of the Shenandoah had caused great excitement in the public mind. The majority of the public were of opinion that it should have taken place between the governor and the commander of that vessel. His motion set that at rest.

[92] *Mr. Hull seconded the motion.

Mr. Hervey said that beyond what had been published any dispatches were confidential, and his excellency would, therefore, not give them up. Under these circumstances he hoped the honorable member would withdraw his motion.

Mr. Cole supported the motion.

Mr. Hull referred to the imbroglio that took place between Lieutenant Lowe, of the confederate tender to the Alabama, in Table Bay, and the governor at that port, and stated that the correspondence was carried on entirely between Lieutenant Lowe, although he was only a lieutenant and commanding a tender, and the governor.

Mr. Highett intimated that he would call for a division.

Mr. Hervey pointed out that there were certain dispatches which the governor was not entitled to lay before the house, and that in the present case they were of that nature. The governor acted in accordance with those instructions.

Mr. Highett said that his motion was merely for the presentation of an address to the governor, and it should be left to the governor to say whether he would comply with it. His own impression was that the instructions were to correspond through the ministry; but he wanted to see that it was so.

Mr. Strachan thought that any instructions sent ought to be laid before Parliament. It seemed very extraordinary that in an important matter, when the correspondence had been carried on by the government and not by the governor, that it could be withheld. The government had not in his opinion come out with very flying colors in the matter. His opinion was that the governor should have carried on the correspondence.

Mr. Fraser opposed the views of the last speaker, and thought the house ought not to press the matter. The governor, through the commissioner of customs, had shown to the public at large what the instructions were, as would be seen from the correspondence. The government had acted under instructions from the governor. (Mr. Fawkner: "Who knows that?") If the dispatch was a private one, they should not insist upon having it.

Mr. Fawkner hoped that the honorable member would press it to a division. If the honorable member who had just sat down had seen all the correspondence and read it, he (Mr. Fawkner) had not.

Mr. Fraser said that he had read it in the public prints.

Mr. Fawkner said that a one-sided view was always taken by the public prints. He characterized the conduct of the government in seizing the ship while on the slip as cowardly and most unmanly. It was, moreover, a ship of war. It was like the case of the Florida. He maintained that the vessel was seized without rhyme or reason. It was quite possible that a few men were stowed away without the knowledge of the commander, and it had not been proved that the men had been employed, although they were charged with having enlisted. The government had compromised itself with the people at large.

Mr. Fellows pointed out the double capacity of the governor as a constitutional sov-

ereign and an agent of the home government, and remarked upon the course taken by Sir Henry Barkly in laying upon the table certain papers, with the understanding that it was not conceded as a right, or to be considered as a precedent. If to the motion the government returned the answer that it was inconvenient, as the papers were private and confidential, there was an end of the matter; but referring to the correspondence he thought a different construction was to be put upon it. He then quoted from the published correspondence to show, that as reference was not made expressly to the governor, that the government were understood to be authorized by the imperial government, and that therefore the instructions could be called for.

Mr. Hervey reminded the house that it was more an imperial than a colonial question. The governor owed a duty to the home government, and if he had done anything wrong, it was his particular duty to justify his action to that government. He only wished the government could produce the letters, as they were not desirous of keeping them back. The matter would come before Parliament at home, and the justification would have to be made in the proper quarter.

Mr. Fellows suggested that the honorable member might say that it did not contain any instructions to the local government.

The question was then put, and agreed to, on a division, by 15 to 10.

MR. COLE'S MOTION.

Mr. Cole moved that copies be furnished of all correspondence between the government and the commander of the Shenandoah. He remarked that it was an important question, involving the neutrality of the port.

[93] *Mr. S. G. Henty seconded the motion.

Mr. Hervey said there was no correspondence between the government and the captain of the Shenandoah. The correspondence was on behalf of the governor, and written under his direction.

After some remarks from Mr. Hull,

Mr. Highett said: Do I understand there has been no correspondence between the government and the Shenandoah?

Mr. Hervey. None.

Mr. Highett said there appeared to be, and urged that the house was entitled to that which had taken place between the commissioner of trade and customs and the commander of the Shenandoah.

Mr. Mitchell asked whether the commissioner of customs held two positions, that of a minister and secretary of the governor.

Mr. Hervey said the governor selected the proper officer to sign the correspondence.

Mr. Fellows. Who? His private secretary?

Mr. Hervey. No. Any correspondence was by the order of his excellency.

Mr. Mitchell. Then it did not take place between any member of the government and the captain of the Shenandoah, but between the secretary of the governor and the captain of the Shenandoah.

Mr. Strachan. Did the governor indorse all the commissioner of customs wrote?

Mr. Hervey. Yes.

Mr. Strachan. Then let us have it shown to be so.

Mr. Fellows. Under his hand and seal.

Mr. Strachan believed there were two letters, and would like to know whether the government indorsed all that was written by Mr. Francis. He did not and could not believe it, and it would be only when it was produced to the house, indorsed by his excellency, that he would believe it.

The question was then put and agreed to.

[From the Argus of February 18, 1865.]

I.

"CONFEDERATE STATES STEAMER OF WAR SHENANDOAH,
"*Port Phillip, January* 25, 1865.

"SIR: I have the honor to announce to your excellency the arrival of the Confederate States steamer Shenandoah, under my command, at Port Phillip, this afternoon, and also to communicate that the steamer's machinery requires repairs, and that I am in want of coals.

"I desire your excellency to grant permission that I may make the necessary repairs and obtain the supply of coals to enable me to get to sea as quickly as possible.

"I desire also your excellency's permission to land my prisoners. I shall observe the neutrality.

"I have, &c.,
(Signed) "JAMES J. WADDELL,
"*Lieutenant Commanding, Confederate States Navy.*

"His Excellency Sir C. DARLING, K. C. B., *&c.*"

2.

"DEPARTMENT OF TRADE AND CUSTOMS,
"*Melbourne, January* 26, 1865.

"SIR: I am directed by his excellency Sir Charles Darling to acknowledge the receipt of your letter of the 25th instant, acquainting his excellency with the arrival of the Confederate States steamer Shenandoah, under your command, at Port Phillip, and intimating that the machinery of the steamer requires repairs, and that you are in want of coals. In the communication under acknowledgment you request his excellency to grant permission to make the necessary repairs, and to obtain a supply of coals, and further, to be allowed to land your prisoners.

"In reply, I have received the instructions of Sir Charles Darling (*sic*) to state that he is willing to allow the necessary repairs to the Shenandoah and the coaling of the vessel to be at once proceeded with, and that the necessary directions have been given accordingly.

"I am at the same time to furnish, for your information, the accompanying extract of orders issued by Her Majesty's government, and publicly notified in the gov-
[94] ernment Gazette of this colony on the 17th of March and the 24th of April, 1862, with respect to armed vessels, whether belonging to the United States or the Confederate States of North America, with which it is requisite for you to comply. In conformity with the terms of the foregoing commands, I am to request that you will be good enough at your earliest convenience to intimate to me, for the information of his excellency, the nature and extent of your requirements as regards repairs and supplies, in order that Sir Charles Darling (*sic*) may be enabled to judge of the time which it may be necessary for the vessel under your command to remain in this port.

"With reference to your request regarding certain prisoners, his excellency desires to be furnished with a list of the prisoners in question, and any other information affecting them which you may be able to afford.

"I have, &c.,
(Signed) "JAS. J. FRANCIS,
"*Commissioner of Trade and Customs.*

"The LIEUTENANT COMMANDING
"*Confederate States steamer of war Shenandoah, Hobson's Bay.*"

The following are the extracts indicated and inclosed:

"You are aware of the determination of Her Majesty's government to maintain the strictest neutrality in the hostilities which are now being carried on between the United and Confederate States of North America. In order to cause that neutrality to be effectually respected throughout the Queen's dominions, Her Majesty has directed (in accordance with a long-established European practice) that no ship of war, privateer, or other armed vessel belonging to either of the belligerents which shall anchor in any British port, shall be allowed to quit her anchorage within twenty-four hours after any vessel belonging to the adverse belligerent, whether armed or unarmed, shall have left the same port.

"In order to give effect to Her Majesty's orders, I am to desire that on the arrival of any such armed vessel in any port or roadstead within your government, you will notify this rule to her commander, and will inform him that, in case he should infringe it, his government will be held responsible by that of Great Britain for violating the neutrality of British waters."

3.

"CONFEDERATE STATES STEAMER SHENANDOAH,
"*January* 28, 1865.

"SIR: Upon the receipt of your communication of the 26th instant, in which permission was granted for the necessary repairs to the Shenandoah to be proceeded with. I sent for and engaged the services of Messrs. Langlands Brothers & Co. to examine the propeller and bracings under water, and to undertake the repairs, which was agreed to by the firm, informing them of the importance of haste, and importance to me their report would be, as his excellency desired to know the extent of injury done the vessel. I was promised a report, and have been asking each day for it, but none has been handed in yet, and as I conceived an idea that their report would be more satisfactory than any I could write for his excellency's information, I have delayed, in accordance with the grace given me, 'at my earliest convenience,' to intimate to you the extent of damages. Every arrangement has been made for lifting the propeller clear of the ship, and a diver has examined the bracings under water to-day.

"From what I have seen of the propeller-shaft and the verbal report of the diver on the bracings under water, I can state that the composition castings of the propeller-shaft are entirely gone, and the bracings under water in the same condition.

"So soon as Messrs. Langland Brothers & Co. hand in their report I shall inclose it to his excellency. The other repairs are progressing rapidly. I fear the damages will prove more serious than I anticipated them to be at first.

"I have, &c.,

(Signed) "JAS. J. WADDELL,

"*Lieutenant Commanding, Confederate States Navy.*

"The Hon. the COMMISSIONER OF TRADE AND CUSTOMS."

4.

"CUSTOM-HOUSE, *Melbourne, January* 30, 1865.

"SIR: I am directed by his excellency the governor to acknowledge the receipt of your letter of the 28th instant, and of your memorandum of this day's date, indorsed on a letter addressed to you by Messrs. Langland Brothers & Co., a copy of [95] which letter * with your subjoined memorandum is returned herewith, and to inform you that it will be necessary that a list of supplies required for the immediate use of your vessel, together with one of the prisoners, &c., as I suggested in my previous communication, should be sent in for the guidance of his excellency before 4 p. m. on the 31st instant.

"I have it further in command to inform you that his excellency has appointed a board, consisting of Mr. Payne, inspector and secretary of the steam navigation board, Mr. Elder, superintendent of the marine yard at this place, and Mr. Wilson, the government marine engineer, to go on board the Shenandoah, and to examine and report whether that vessel is now in a fit state to proceed to sea, or what repairs are necessary.

"I have, &c.,

(Signed) "JAS. G. FRANCIS.

"J. J. WADDELL, Esq.,

"*Lieutenant Commanding, Confederate States Steamer Shenandoah.*"

5.

"PORT PHILIP FOUNDRY,

"*Melbourne, January* 30, 1865.

"SIR: At your request we beg to report that it will be absolutely necessary to put the Shenandoah on the government slip, as, after inspection by the diver, he reports that the lining of outer sternback is entirely gone, and will have to be replaced.

"As to the time required (as three days will elapse before she is slipped) we will not be able to accomplish the repairs within ten days from date.

"Yours, &c.,

(Signed) "LANGLAND BROS. & CO.

"Captain WADDELL,

"*Confederate War Steamer Shenandoah.*"

"*Indorsement.*—Respectfully submitted to the honorable commissioners of trades and customs, with the request that it may be returned.

(Signed) "JAS. J. WADDELL,

"*Lieutenant Commanding.*

"JANUARY 30, 1865."

6.

"DEPARTMENT OF TRADE AND CUSTOMS,

"*Melbourne, January* 31, 1865.

"SIR: By direction of his excellency the governor I have the honor to acknowledge the receipt this morning of your letter of yesterday's date, stating the supplies required for the officers and crew of the vessel under your command, and informing me that the prisoners alluded to in your previous communication have left the Shenandoah without your knowledge, in shore boats, soon after your arrival.

"I am desired by Sir Charles Darling (*sic*) to state that permission is conceded for you to ship on board the Shenandoah, in such quantities as may be reasonably necessary, the provisions and supplies enumerated in your communication under reply.

"I would therefore request that your purser, authorized in that behalf, will communicate with the collector of customs as to the quantities and detailed particulars.

"I am again to request to be furnished with a list giving the number of and particulars (as far as possible) with respect to the prisoners who were brought to this port in the Shenandoah; and I may add that the number in this instance is understood to be small, yet action in this case may form a precedent for future guidance should

such a question again arrive, with perhaps a larger number of persons whom it may be desired to land in violation of municipal or other laws or regulations in force in this colony.

"I have, &c.,
(Signed) "JAS. G. FRANCIS,
"*Commissioner of Trade and Customs.*

"J. J. WADDELL, Esq.,
"*Lieutenant Commanding, Confederate States Steamer Shenandoah.*"

7.

"CONFEDERATE STATES STEAMER SHENANDOAH,
"*February* 1, 1865.

"SIR: I have the honor to acknowledge the receipt of your communication of yesterday's date, and in reply to that portion which has reference to supplies, &c., directions have been given the paymaster of the Shenandoah, in accordance with your views. I cheerfully furnish a list of those persons who were my prisoners on the [96] 'high seas,' at your request, for future guidance; and at the same time inform you that a list was furnished Mr. McFarlane, chief officer of Her Majesty's customs for Williamstown, as far back as the 25th or the 26th ultimo, in official form.

"Particulars connected with the prisoners brought into Port Philip are the following:

"They were captured serving in the American bark Delphine, which vessel I destroyed, and after reaching this port, left this vessel of their own free will without consulting the regulations in force in this colony, unmolested and unassisted, and not in any boat belonging to this vessel.

"I am extremely anxious to get the Shenandoah to sea. The procrastination by the parties employed under his excellency the governor's permission for the necessary repairs to this ship seems to me unnecessary, and if I appeal to his excellency the governor for further instructions to those employed to hurry up the work on this ship, I hope his excellency the governor will see in it the spirit of a law-abiding man, and one anxious to be about his country's business.

"Yesterday the commission of officers appointed by his excellency the governor for the examination of this vessel came on board, but I was absent from the ship, not having been informed by the honorable commissioner of trade and customs of the day set apart for that visit.

"I have, &c.,
(Signed) "JAS. J. WADDELL,
"*Lieutenant Commanding, Confederate States Navy.*

"The Hon. COMMISSIONER OF TRADE AND CUSTOMS."

8.

"DEPARTMENT OF TRADE AND CUSTOMS,
"*Melbourne, February* 1, 1865.

"SIR: I am directed by his excellency the governor to acquaint you that he has received a progress report from the board appointed to examine the Shenandoah, and report whether that vessel is in a fit state to proceed to sea, or what repairs are necessary. From the tenor of this communication it is evidently necessary that your ship should be placed on the patent slip for further examination and repairs; and I presume you will proceed promptly with the necessary arrangements. For your information I may state that the slip, termed the government patent slip in the communication to yourself from Messrs. Langlands, Brothers & Co., is not in possession of or under the control of the authorities. It was originally built by this government, but for many years has been leased to various parties, and your arrangements must therefore be made with the present lessees.

"By inadvertence you have omitted to inclose the list of prisoners to which you make reference in your communication of this date.

"I have, &c.,
(Signed) "JAS. G. FRANCIS,
"*Commissioner of Trade and Customs.*

"J. J. WADDELL, Esq.,
"*Lieutenant Commanding, Confederate States Steamer Shenandoah.*"

9.

"CONFEDERATE STATES STEAMER SHENANDOAH,
"*February* 1, 1865.

"SIR: I have the honor to acknowledge receipt of your communication of this date's date, informing me of the character of the report made to his excellency the governor

by the board of examiners, also calling my attention to another list of prisoners which you desire. I cheerfully furnish this the second list, and have, &c.,

(Signed) "JAS. J. WADDELL,
"*Lieutenant Commanding, Confederate States Navy.*

"The Hon. the COMMISSIONER OF TRADE AND CUSTOMS."

10.

"DEPARTMENT OF TRADE AND CUSTOMS,
"*Melbourne, February* 7, 1865.

"SIR: I am instructed by his excellency the governor, Sir Charles Darling, to acquaint you that as the ship under your command, the Shenandoah, has already been twelve days in our port with permission to lay in provisions or things necessary for the subsistence of her crew, and to effect the necessary repairs, it is desired by his excellency that you should now name the day upon which you will be prepared to
[97] proceed to sea; and I *am further directed to inform you that after carefully considering the question of the position of Great Britain as strictly neutral in the present contest, the use of appliances, the property cannot be granted nor any assistance rendered by it directly or indirectly toward effecting the repairs of the Shenandoah.

"I have, &c.,

(Signed) "JAS. G. FRANCIS,
"*Commissioner of Trade and Customs.*

"J. J. WADDELL, Esq.,
"*Lieutenant Commanding, Confederate States Steamer Shenandoah.*"

11.

"CONFEDERATE STATES STEAMER SHENANDOAH,
"*February* 7, 1865.

"SIR: I have the honor to acknowledge the receipt of your communication of this day's date, and in reply, for information desired for his excellency the governor, I have to write that I cannot name a day for proceeding to sea with this ship, until she is taken on the slip, when the injury can be perfectly ascertained and time estimated for its repair. The recent gales have prevented me from lightening the ship to the necessary draught preparatory to going on the slip, in which matter I have been guided by those who are in charge of the slip. I hope the weather will permit the engineer to take the Shenandoah on the slip to-morrow morning.

"I am, &c.,

(Signed) "JAS. J. WADDELL,
"*Lieutenant Commanding, Confederate States Navy.*

"The Hon. the COMMISSIONER OF TRADE AND CUSTOMS."

12.

"DEPARTMENT OF TRADE AND CUSTOMS,
"*Melbourne, February* 14, 1865.

"SIR: Referring to my communication of the 7th instant, I am again directed by his excellency Sir Charles Darling to inquire whether you are now in a position to state more definitely when the Shenandoah will be in a position to proceed to sea; and if so, I shall be obliged by your informing me accordingly.

"I have, &c.,

(Signed) "JAS. G. FRANCIS,
"*Commissioner of Trade and Customs.*

"J. J. WADDELL, Esq.,
"*Lieutenant Commanding, Confederate States Steamer Shenandoah.*"

13.

"CONFEDERATE STATES STEAMER SHENANDOAH,
"*February* 14, 1865.

"SIR: I have the honor to acknowledge receipt of your communication of this day's date, and in reply have the pleasure to inform you, for his excellency the governor's information, that the superintendent of the slip, and Messrs. Langland Brothers & Co., inform me that the Shenandoah will be ready for launching to-morrow morning, the 18th instant, at four o'clock a. m., and I think, without some unforeseen accident, I shall proceed to sea in her by Sunday, the 19th instant. I have yet to take in all my stores, coals, and swing the ship.

"I have, &c.,

(Signed) "JAS. J. WADDELL,
"*Lieutenant Commanding, Confederate States Navy*

"The Hon. the COMMISSIONER OF TRADES AND CUSTOMS."

14.

"CUSTOM-HOUSE, *Melbourne, February* 14, 1865.

"SIR: I am directed by his excellency the governor to state that it has been reported to the government that you have refused to allow the execution on board the Shenandoah of a warrant issued upon sworn information according to law, alleging that a British subject is on board that vessel, who has entered the service of the Confederate States in violation of the British statute known as the foreign-enlistment act; that it is not consistent with the British law to accept any contrary declaration of facts, whatever respect be due to the person from which it proceeds, as sufficient to justify the non-execution of such warrant; and that moreover it is conceived that this govern-
[98] ment has a right to expect *that those who are receiving in our port the aid and assistance which they claim as a belligerent under the Queen's proclamation should not in any way oppose proceedings intended to enforce the maintenance of neutrality.

"It will be apparent to you that the execution of the warrant is necessary, in order to enable the government to bring to justice those upon whose depositions the warrant was issued, if the statements in those depositions should prove false in fact.

"In this view you are appealed to to reconsider your determination, and pending further information from you, which you are requested to make with as little delay as possible, the permission granted you to repair and take in supplies is suspended, and Her Majesty's subjects have been duly warned accordingly.

"I have, &c.,
(Signed) "JAS. G. FRANCIS.

"J. J. WADDELL, Esq.,
"*Lieutenant Commanding, Confederate States Steamer Shenandoah.*"

15.

"CONFEDERATE STATES STEAMER SHENANDOAH,
"*February* 14, 1865.

"SIR: I am in the receipt of your letter of this date, in which you inform me that you have been directed by his excellency the governor to state 'that it has been reported to the government that I have refused to allow the execution on board the Shenandoah of a warrant issued upon sworn information, according to law, alleging that a British subject is on board this vessel who has entered the service of the Confederate States, in violation of the British statute known as the foreign-enlistment act; and that it is not consistent with the British law to accept any contrary relation of facts, whatever respect be due to the person from whom it proceeds, as sufficient to justify the non-execution of such warrant.' I am then appealed to 'to reconsider my determination,' and the letter concludes by informing me that, 'pending a further intimation from me,' the permission granted to repair and take supplies is suspended.

"I have to inform his excellency the governor that the execution of the warrant was not refused, as no such person as the one therein specified was on board, but permission to 'search' this ship was refused. According to all the laws of nations the deck of a vessel of war is considered to represent the majesty of the country whose flag she flies, and she is free from all executions except for crimes actually committed on shore, when a demand must be made for the delivery of such person, and the execution of the warrant performed by the police of the ship. Our shipping articles have been shown to the superintendent of police. All strangers have been sent out of the ship, and two commissioned officers were ordered to search if any such have been left on board. They have reported to me that, after making a thorough search, they can find no person on board except those who entered this port as part of the complement of men.

"I, therefore, as commander of the ship, representing my government in British waters, have to inform his excellency that there are no persons on board this ship except those whose names are on my shipping-articles, and that no one has been enlisted in the service of the Confederate States since my arrival in this port, nor have I in any way violated the neutrality of the port.

"And I, in the name of the government of the Confederate States of America, hereby enter my solemn protest against any obstruction which may cause the detention of this ship in this port.

"I have, &c.,
(Signed) "JAS. J. WADDELL,
"*Lieutenant Commanding, Confederate States Navy.*

"The Hon. JAS. G. FRANCIS,
"*Commissioner of Trade and Customs, Melbourne.*"

16.

Telegram from Mr. Standish, chief commissioner of Victorian police, to Mr. Bearer, police inspector, stationed at Williamstown.

"I have to direct that you communicate with Mr. Chambers, the lessee of the patent slip, that the governor in council has given directions that he and all other British subjects in this colony at once desist from rendering any aid or assistance, or perform any work in respect to the said classed confederate ship Shenandoah, or in launching the same. You will at once proceed with the whole of the police at your disposal to the patent slip and prevent, at all risks, the launch of the said ship. Superin-
[99] tendent *Lyttleton and fifty men, also fifty of the military, proceed at once to Williamstown, telegraphing anything that may occur direct to me.

'TUESDAY, *February* 14, 1865.

(Signed) "F. C. STANDISH."

17.

"CONFEDERATE STATES STEAMER SHENANDOAH,
"*February* 15, 1865.

"SIR: I am informed by the manager of the slip upon which the Confederate States steamer Shenandoah now rests, that the ship has been seized by authority from his excellency the governor to prevent the launching of the Confederate States steamer Shenandoah, which of necessity is a seizure of the vessel under my command. I therefore respectfully beg to be informed if this seizure is known to his excellency the governor, and if it meets his approval.

"Very respectfully,

(Signed) "JAS. J. WADDELL,
"*Lieutenant Commanding, Confederate States Navy.*

"The Hon. the COMMISSIONER OF TRADE AND CUSTOMS."

18.

"CUSTOM-HOUSE, *Melbourne, February* 15, 1865.

"SIR: In acknowledging your letters of yesterday's date, and also in reply to your communication of this morning, I am instructed by his excellency the governor to inform you that the lessee of the patent slip having reported that the safety of the ship Shenandoah may be endangered by her present position on the slip, the suspension of permission to British subjects to assist in launching the ship is withdrawn, while the further matters referred to in your letters are under consideration, and will be replied to with as little delay as possible.

"I have, &c.,

(Signed) "JAS. G. FRANCIS.

"J. J. WADDELL, Esq.,
"*Lieutenant Commanding, Confederate States Steamer Shenandoah.*"

19.

"CUSTOM-HOUSE, *Melbourne, February* 15, 1865.

"SIR: I am directed by his excellency the governor to further acknowledge your communications of the 14th and 15th instant, in which, alleging that the vessel under your command had been seized, you ask whether the seizure is known to his excellency the governor, and if it meets his approval.

"I am to inform you in reply that this government has not directed or authorized the seizure of the Shenandoah.

"The instructions to the police were to see that none of Her Majesty's subjects in this colony render any aid or assistance to or performed any work in respect of your vessel during the period of the suspension of the permission which was granted to you to repair and take in supplies, pending your reply to my letter of yesterday's date in regard to a British subject being on board your vessel, and having entered the service of the Confederate States in violation of the British statute known as the foreign-enlistment act, and of the instructions issued by the governor for the maintenance of neutrality by Her Majesty's subjects.

"In addition to evidence previously in possession of this government, it has been reported by the police that at about 10 o'clock last night four men, who had been in concealment on board the Shenandoah, left the ship, and were arrested immediately after so leaving by the water-police.

"It appears from the statements of these men that they were on board your vessel both on Monday and Tuesday, the 13th and 14th instant, when their presence was denied by the commanding officer in charge, and by yourself subsequently, when you declared that there were no persons on board this ship except those whose names are on our shipping-articles. This assertion must necessarily have been made by you

without having ascertained for yourself by a search that such men were not on board, while at the time you refused permission to the officer charged with the execution of the warrant to carry it into effect.

"Referring to that portion of your communication of the 14th instant in which you inform his excellency the governor 'that the execution of the warrant was not [100] refused, *as no such person as the one therein specified was on board,' I am in a position to state that one of the four men previously alluded to is ascertained to be the person named in the warrant.

"I am also to observe that while at the moment of the dispatch of your letter it may be true that these men were not on board the Shenandoah, it is beyond question that they were on board at the time it was indited, your letter having been dispatched at five minutes before 10 o'clock.

"It thus appears plain, as a matter of fact, that the foreign-enlistment act was in course of being evaded.

"Nevertheless, as the only person for whose arrest a warrant was issued has been secured, and as you are now in a position to say, as 'commanding officer of the ship, and in behalf of your government, whose faith is pledged by the assurance, that there are no persons on board this ship except those whose names are on our shipping-articles, and that no one has been enlisted in the service of the Confederate States since my arrival in this port,' his excellency the governor has been pleased to revoke the directions issued yesterday, suspending permission to British subjects to aid and assist you in effecting the necessary repairs and taking in supplies.

"I am to add, it is expected you will exercise every dispatch, so as to insure your departure by the day named in your first letter of yesterday, viz, Sunday next.

"I have &c.,

(Signed) "JAS. G. FRANCIS.

"J. J. WADDELL, Esq.,

"*Lieutenant Commanding, Confederate States Steamer Shenandoah.*"

20.

"CONFEDERATE STATES STEAMER SHENANDOAH,

"*Hobson's Bay, February* 16, 1865.

"SIR: I am in receipt of your communication of yesterday's date, and desire to convey through you to his excellency the governor my appreciation and thanks for his observance of the rights of belligerents, and further to assure his excellency the governor that every dispatch is being made by me to get the Shenandoah to sea at the earliest possible moment.

"The four men alluded to in your communication are no part of this vessel's complement of men; they were detected on board by the ship's police after all strangers were reported out of the vessel, and they were ordered and seen out of the vessel by the ship's police immediately on their discovery, which was after my letter had been dispatched informing his excellency the governor that there were no such persons on board. These men were here without my knowledge, and I have no doubt can be properly called stowaways, and such they would have remained but for the vigilance of the ship's police, inasmuch as they were detected after the third search, but in no way can I be accused, in truth, of being cognizant of an evasion of the foreign-enlistment act.

"In conclusion, sir, allow me to inform you that I consider the tone of your letter remarkably disrespectful and insulting to the government I have the honor to represent, and that I shall take an early opportunity of forwarding it to the Richmond government.

"Very respectfully,

(Signed) "JAS. J. WADDELL,

"*Lieutenant Commanding, Confederate States Navy.*

"The Hon. the COMMISSIONER OF TRADE AND CUSTOMS."

This closes the correspondence between Captain Waddell and the government. But the following letter was dispatched to Mr. Higinbotham:

21.

"CONFEDERATE STATES STEAMER SHENANDOAH,

"*Hobson's Bay, February* 14, 1865.

"SIR: Be pleased to inform me if the Crown claims the sea to be British waters three miles from the Port Phillip head-lights, or from a straight line drawn from Point Lonsdale and Schanck.

"I have, &c.,

(Signed) "JAS. J. WADDELL,

"*Lieutenant Commanding, Confederate States Navy.*

"The Hon. the ATTORNEY GENERAL."

[101] *Captain Waddell states that a reply, written and signed by a clerk, was brought to him by a messenger, of whom he knew nothing till a gentleman on board explained who he was. The document simply stated that no reasons for the communication of the information had been given. Captain Waddell handed the "reply" back to the messenger, with the simple answer that it was not what he wanted, and that it had better be taken back, with his compliments.

From the Age of February 16, 1865.

In the legislative council yesterday, the President being absent through illness, Dr. Wilkie, the chairman of committees, took the chair at a quarter past 4 o'clock.

Mr. Fellows asked the commissioner of public works, without notice, what steps had been taken by the government with reference to an attempt to execute a magistrate's warrant on board the Shenandoah.

Mr. Hervey explained that a warrant had been granted upon information of certain persons having been shipped on board the Shenandoah contrary to the laws of neutrality, and that a police-officer had been dispatched with the warrant to search the ship. He was denied permission to execute the warrant, and the government determined to suspend the privileges which had been granted to the commander of the Shenandoah on his entering the port. Four person who had been shipped in contravention of the neutrality laws had been captured by the police in attempting to escape, and were now in custody. The commander of the Shenandoah having stated, upon his honor as an officer and gentleman, that the ship having been cleared of strangers there was now no person on board who was not there when the ship entered the port, the government had granted a resumption of the privileges they had suspended, upon leave being refused to search the ship.

On the motion of Mr. Fraser, twelve months' leave of absence from the 1st of March was granted to the Hon. T. T. A'Beckett. The land-act amendment bill was further considered in committee, Mr. James Henry acting as chairman. The bill was reported to the house, and the adoption of the report made on order of the day for Tuesday next. The house adjourned at seven minutes past 5 o'clock, until Tuesday, the 21st instant.

PARLIAMENT OF VICTORIA.—LEGISLATIVE COUNCIL.

WEDNESDAY, *February* 15, 1865.

The clerk announced at a quarter past 4 o'clock that he had received a note from the president to the effect that he was prevented by illness from attending the sittings of the council that afternoon.

Dr. Wilkie, the chairman of committees, accordingly took the president's chair, and read the usual form of prayer.

THE SEIZURE OF THE SHENANDOAH.

Mr. Fellows rose to ask the commissioner of public works, without notice, whether the government had received any information with reference to an attempt to execute a magistrate's warrant on board the Shenandoah, now on the patent slip at Williamstown; and, if so, what steps they had taken in the matter. He apprehended, as far as the law of the matter went, that if any foreign merchant-vessel visited these ports, she owed a temporary allegiance to the laws of this country, and was subject, of course, to the jurisdiction of the colonial courts. An implied consent was given to a ship of war or armed vessel belonging to another country to enter these ports, and there was also an implied consent on the part of the power giving permission to enter the port that a vessel of that character should not be subject to any jurisdiction of the courts of that power. This being the case, he wished to know what action the government had taken in the matter. He might remind the honorable member, with reference to the protection foreign vessels were entitled to claim, that it had been decided in the court of admiralty that a merchant-vessel leaving a country and returning under commission from a foreign power, and being brought before the court by her former owners, the latter were not in a position to recover, because the ship was owned by a foreign power.

Mr. Hervey wished to know if he was desired to answer the whole question at once without notice.

Mr. Fellows. Merely whether the government have taken any steps to execute the warrant.

Mr. Hervey then stated that the government had received notification of an [102] *information having been laid before the police-bench at Williamstown to the effect that a cetain individual had been shipped on board the Shenandoah contrary to the neutrality laws of this country in regard to the Confederate and Federal States of America. The commander of the Shenandoah, on entering these waters, had

sought the protection of the colonial government, and certain facilities for repairs and obtaining of supplies, such as a neutral power was justified in giving, had been granted at his request. He was informed that it was the intention of the government to observe strict neutrality, and he gave that pledge which would be expected from any person in his position that he would strictly observe the laws of neutrality. Complaints, however, were made that a number of British seamen having joined the ship since she entered these waters, and proceedings were taken upon several depositions which had been made with regard to British subjects being on board the vessel. An officer of the police was sent with a warrant on Monday to arrest a man sworn to be in the ship. The commander of the vessel was not on board at the time, and the chief officer declined to permit the warrant to be executed until the captain returned. On Tuesday the same officer of police was dispatched with a warrant, and the captain refused to allow it to be enforced. In all similar cases when a warrant was sent on board a foreign vessel it was usual for the authority to be recognized, and if the officer of police in whose possession it was was not asked to exercise it, it was executed by the police of the vessel, there being ship-police on every vessel of war. In this case there was a positive refusal to permit the warrant to be executed at all. Numerous affidavits having been made that many persons had been induced to ship on board the Shenandoah, the government determined to suspend the privileges granted to the commander on condition of his observing the neutral laws, and in order that this direction should be properly carried out without violence, a body of police was sent down to Williamstown to see that none of Her Majesty's subjects infringed the order which had been issued on the subject. A communication was sent to the commander explaining to him the circumstances under which the privileges previously granted him had been suspended. The police, under instructions to carry out the order, remained near the vessel all night, and about 10 o'clock they observed several persons attempting to escape from the Shenandoah by means of a swift waterman's boat. The water-police pursued and captured the boat, which contained four persons, who proved in each instance to be men who had joined the Shenandoah since her arrival in these waters. Three were British subjects and one was not; but still it was necessary that the fourth individual should have obtained permission before shipping. A letter the captain of the Shenandoah wrote in answer to the communication of the government distinctly stated that when the officer of police visited his ship he had no individual on board who was not there when the vessel entered Victorian waters; but it was now known that several men who shipped in Hobson's Bay had escaped in addition to the four who were captured. The captain of the Shenandoah then wrote to say that, having cleared the ship of strangers, he was enabled to say on his honor as an officer and a gentleman that there was no person on board (as he had ascertained by the inspection of two commissioned officers appointed for the purpose) who was not there when the vessel came into port. Upon this statement, made on the strength of the ship having been cleared of strangers, the government had to-day authorized the resumption of the privileges formerly granted to the commander of the Shenandoah, reserving to itself, however, the decision upon certain points which would all be made public when the measures which would be passed on the subject were brought forward.

Mr. Hull asked if the violation of the laws of neutrality would be followed up by any further proceedings.

Mr. Hervey replied that the men in custody were to be brought before the Williamstown bench on the following morning.

Mr. Fellows. Under what authority was the permission for carrying out repairs suspended?

Mr. Hervey. Upon the authority of the representative of Her Majesty, of course.

From the same paper.

THE SHENANDOAH.—Mr. McCulloch, in reply to a question by Mr. O'Shanassy, made a lengthened statement, which will be found in another column, as to the steps that had been taken by the government with respect to the Shenandoah.

In reply to Mr. O'Shanassy, Mr. McCulloch stated it would be unadvisable to lay on the table of the house the correspondence between the government and the commander of the confederate war-ship Shenandoah at the present time. He, however, explained the action taken by the government relative to the breach of the foreign-enlistment act said to have been committed.

[103] **From the Herald of February* 2, 1865.

A large crowd assembled in front of the Theater Royal last night, in expectation of seeing the officers of the Shenandoah, who, according to the bills, were to patronize the performances. However, following the dictates of good taste, the confederate officers arrived at the theater singly, and thus avoided the chance of a popular demonstra-

tion. There was no attempt on the part of the audience inside to exhibit their sympathies *pro* or *con*, and the dramatic and other entertainments on the stage were sufficiently attractive to absorb their attention throughout the night.

From the same paper.

LEGISLATIVE ASSEMBLY.

WEDNESDAY, *February* 1, 1865.

The speaker took the chair at half past 4 o'clock.

THE POLICE FORCE.

Mr. McCulloch, in reply to Mr. Crews, stated it was the intention of the government to introduce a bill to amend the law relating to the police force, and also to provide for an allowance for members retiring therefrom.

THE CONFEDERATE SHIP SHENANDOAH.

Mr. Berry called the attention of the honorable the chief secretary to the infringement of the neutrality proclamation by a vessel styled the Shenandoah, now in Hobson's Bay, and asked whether the government intended to take steps to confiscate the vessel and to punish the officers for a misdemeanor, in accordance with the provisions of the said proclamation. He thought that it could not be denied that unmistakable evidence existed that this vessel was the Sea King, which cleared out from London for Bombay with a cargo of coals. In a Manchester paper of the 19th of November there was an article alluding to the Shenandoah as the Sea King, and containing a statement from the persons who went out in her. He had also seen a deposition made by one of the prisoners since the arrival of the vessel in the bay, from which it appeared that there was no mistake as to the former name of the vessel. Under the Queen's proclamation, if this vessel had returned to an English port after destroying vessels at sea, without touching at any confederate port, she would have been seized, and he saw no difference because this country was a little further off. There was abundance of evidence forthcoming for the facts to be placed prominently and unmistakably before the government.

Mr. McCulloch, in reply to the honorable member, stated that the question was a most important one, and must be dealt with in a most cautious manner. A statement had been made that the vessel was the Sea King, but there was no proof of that beyond a mere newspaper report, which had been quoted by the honorable member. No proof had been brought forward by the honorable member at all; and even if such had been the case, it was questionable whether the government could deal with the ship as a pirate. [Hear, hear.] The government had given great attention to this question, and, in addition to having the proclamation before them, they were also in receipt of confidential dispatches from the home government, in which a case of a similar description was mentioned. The government, having this information before them, and having well weighed the matter, would not feel justified in treating this vessel as a pirate. [Hear, hear.] While the terms of the neutrality proclamation would be strictly adhered to, the vessel would be allowed to take in provisions for the proper maintenance of the crew and effect the necessary repairs. But the government could not do anything further in the matter. [Hear, hear.]

Mr. Berry wished to read the deposition of a lady prisoner. [No, no.]

Mr. Higinbotham objected. If the honorable member had any information to give, this was not the place to furnish it; besides which, it was only an *ex parte* statement.

Mr. O'Shanassy agreed that the British government was the proper authority to deal with this subject, and reminded the house that nothing more had been done with the Shenandoah than had been done by the neutral powers of Europe in the case of other confederate vessels.

Mr. Lalor was under the impression that the governor, as the representative of Her Majesty, had the power to deal with foreign vessels.

The subject then dropped.

[104] *In the legislative assembly yesterday Mr. Berry called attention to the presence of the confederate ship Shenandoah in Hobson's Bay, and asked whether, as an infringement of the neutrality law had clearly taken place, the government intended to take any steps toward the confiscation of the vessel.

Mr. McCulloch, in reply, stated that the honorable member had offered no proof of any infringement. In addition to the Queen's proclamation to guide them, the government had received private dispatches from home which had reference to a similar case.

While the neutrality law would be strictly adhered to, the Shenandoah would be permitted to remain in Hobson's Bay until the necessary repairs had been effected and the captain had taken in the coals and provisions which were absolutely required.

This statement was received with cheers from all sides of the house.

In the legislative assembly yesterday the speaker took the chair at half past 4 o'clock.

A petition was presented from the miners, store-keepers, and others resident in Raywood, in favor of the tariff.

In reply to Mr. Crews, Mr. McCulloch stated that it was the intention of the government to bring in a bill to amend the law relating to the police force, and that the twenty-fourth clause of the present act had been repealed.

Mr. Berry asked Mr. McCulloch whether the government intended to take any action with regard to the ship Shenandoah, now at anchor in Hobson's Bay, which ship, he stated, was the Sea King, reported to have been wrecked, but now sailing under another name. This statement he proposed to prove by means of a letter received by him from a lady, which showed this to be the identical vessel. He asked, further, whether it was intended to confiscate the Shenandoah and to punish her officers for a misdemeanor, in accordance with the provisions of the neutrality proclamation.

Mr. McCulloch stated the government had had the matter under their consideration, and, besides having the neutrality proclamation before them, had also had a private dispatch from the imperial government, stating what had been done in a similar case, and that it had been found that they could not treat the Shenandoah as a pirate, and had not the power to interfere, but were bound to allow her to provision and to effect such necessary repairs as were required to render her sea-worthy.

From the Age of February 2, 1865.

The Shenandoah.—Mr. Berry called the attention of the honorable the chief secretary to the infringement of the neutrality proclamation by a vessel styled the Shenandoah, now in Hobson's Bay, and asked whether the government intended to take steps to confiscate the vessel and to punish the officers for a misdemeanor, in accordance with the provisions of the said proclamation. In doing so, he remarked that the action of the government or of the people of this colony in respect to a vessel of the kind referred to might lead to complications between the mother country and the country with which she was in friendly relations. He did not wish to interfere in any way as between the belligerents, but he looked at the matter solely from an English point of view; and, looking at it in that light, he considered that the neutrality proclamation has been invaded.

The speaker informed the honorable member that in asking a question he was not allowed to state his opinions, but must confine himself to a statement of facts.

Mr. Berry said he believed it would not be denied that the evidence was quite clear that the vessel now in the bay was the Sea King. [A voice, "No."] An honorable member said there was no evidence. Now, he maintained that there was abundance of evidence. The Sea King, with a cargo of coals, sailed from London for Bombay on the 8th of October last. All that had been heard of that vessel since, that he was aware of, was by a report in an English paper that reached this colony some time back, and in a letter in a Manchester paper, written by one of the men who left London in the Sea King and returned home. In that letter it was stated that the confederate cruiser Shenandoah was the Sea King, and that the men who formed her crew went out in the Laurel. During the last few days since the vessel was in port it was a matter of common report, and had been stated in the newspapers, that she was the Sea King. But he had had placed before him stronger evidence. He had seen the depositions of one of the prisoners, who said that during the passage the captain and officers stated that the vessel was the Sea King, and that the chief officer went out in her from London, while the captain went in the Laurel, in which vessel the armament for the Shenandoah was conveyed out to Madeira packed in boxes. That being the case, and as the vessel had never been in a port of any other country, she would, had she [105] *returned to a British port, have been seized and condemned. He maintained that there was no difference in respect to the way she should be dealt with, because she had arrived in a distant port. The government of the colony was as much bound to carry out the neutrality laws here as they would be within the bounds of the mother country. He thought there was sufficient evidence to demand that an inquiry should be made as to how a British vessel clearing out from a British port had entered on the piratical course of destroying vessels at sea, many of which were loaded with English cargo owned by English merchants. The second section of the proclamation to which he had referred stated that not only was it a misdemeanor to fit out, arm, and send a vessel to sea, but also that the vessel should be liable to confiscation by any officer of competent jurisdiction in Her Majesty's dominions. If this vessel was proved to be the Sea King, and he held there was abundant evidence that she was, she ought to be confiscated, leaving out of the question altogether the parties who

might be indictable for a misdemeanor. His only object in calling the attention of the chief secretary to this matter was, that the facts might be brought prominently and unmistakably under the notice of the government, who, he took it, were as strictly anxious to enforce the spirit of the proclamation as the home government could be. At the commencement of the war there was considerable looseness in the conduct of the home government, but there had been no looseness lately. The honorable the chief secretary would bear in mind that the "rams," fitted out by Mr. Laird, were seized by the government; and that, as they were informed by the last mail, a number of persons were seized in Liverpool under the first clause of the proclamation which was directed to the prevention of enlistment. That showed that the British government were now strictly enforcing the provisions of the neutrality proclamation, and that should be an additional reason for attention being given to it here. He believed that, for all the vessels that had been destroyed by the Shenandoah, the Federal Government would, at some future time, claim compensation. That vessel, so far as they could judge, had no authority from the confederate government to act as she was doing. If this vesse was the Sea King, and if she sailed on a voyage to Bombay, and was seized against the will of her owners and converted into a pirate, she ought to be taken possession of for the owner; and if she was so converted with the consent of the owners, then she ought to be confiscated under the second clause of the neutrality proclamation. At any rate, he thought there was abundant evidence to require a scrutiny to be made as to this vessel.

Mr. McCulloch admitted that this was a most important question, and one that ought to be dealt with in a very cautious manner. He thought that, under all the circumstances, it would not be well for this legislature to enter into a discussion of the various matters that would be brought forward, and the allegations affecting this vessel, as those might be made the subject of inquiry by the imperial Parliament. [Cheers.] It was said by the honorable member for Collingwood that this vessel was the Sea King. But what proof was there of that? [Cheers.] All the evidence they had was a newspaper report and a letter in a Manchester paper. The honorable member had not brought forward any other evidence than that. Still he said there was proof. It was said that there were the letters "ING" on her side, which led to the belief that she was the Sea King. But was that proof? [Cheers.] Although, however, there was proof that this vessel was the Sea King, he questioned whether this government could deal with this ship as a pirate. [Cheers.] During the last week the government had given a considerable amount of attention to this question, desiring to carry out strictly the rules with reference to such vessels; and with that view they had had under consideration, not only the neutrality proclamation, but also dispatches from the imperial government regarding such cases. They had also had brought before them a case exactly similar to the case of this vessel. All the circumstances were exactly similar to those of this case. The government having considered this case, and well weighed it, had come to the conclusion that they would not be justified in treating this vessel as a pirate; but they would insist on strict neutrality being observed, and the vessel would only be allowed to remain in port so long as was necessary for her to take in what was necessary for the support of her crew, and to have such repairs effected as were required to enable her again safely to go to sea. [Cheers.] The government felt that they could not go any further in this matter. [Cheers.]

Mr. Berry stated that, as the honorable the chief secretary had denied that there was sufficient proof that this was the Sea King, he would like to make the matter complete by reading a deposition that was made that day in his presence, by one of the prisoners she brought here.

Mr. Higinbotham said he must object to the course taken by the honorable member. [Cheers.] If the honorable member had evidence, he could submit to the govern-
[106] ment; *that was not the proper place to bring it forward. [Cheers.] He would beg leave to suggest that the honorable member should not read documents in the house that ought to be laid only before the government.

Mr. O'Shanassy thought that the colonial government was not the proper authority to deal with this matter. He concurred in what had been stated by the honorable the attorney-general, that *ex parte* statements, taken by any party, should not be read in that house. They ought to deal with the utmost impartiality in this matter, which was the best way to secure the countenance, so far as they could, of the friendly relations between the mother country and the Federal Government. The Alabama, when she visited Cherbourg, was allowed to remain there for some time, and get supplies and repairs; and the Florida was allowed to lie in the port of Brest for three or four months. They could not do better, in his opinion, than follow the example of a nation that had had so much experience in those matters. He thought the honorable member might well now let the matter drop.

Mr. Lalor considered that it was wrong to discuss the matter in that house at all. His excellency, he considered, alone had full power to deal with the matter. It was wrong to bring the matter forward here and compel persons to take different sides. If

the honorable member were to do so, he ought to give notice of motion, so that the question might be fairly discussed.

The subject then dropped.

From the Argus of February 2, 1865.

A discussion arising out of the presence in Victorian waters of the confederate war-steamer Shenandoah took place in the legislative assembly yesterday. Mr. Berry, who intiated the discussion, called attention to the Queen's proclamation of May, 1861, declaring that the arming and sending out of vessels, with the view of handing them over, by sale or otherwise, to a belligerent, was a misdemeanor, and that the vessel was liable to confiscation by any officer having competent jurisdiction in any port of Her Majesty's dominions. There was abundant evidence (said Mr. Berry) that the vessel now in Hobson's Bay was the Sea King, which cleared from London about the 8th of October for Bombay, with a cargo of coals, and that she had destroyed vessels at sea, some of them being loaded with cargo belonging to British subjects. He held that there should be as great an observance of neutrality laws here as in any other part of the British empire, and he begged to ask whether the government intended to take steps to confiscate the Shenandoah, and to punish the officers for a misdemeanor.

The chief secretary observed that, beyond reports and rumors, there was no proof that the confederate vessel was formerly the Sea King. At the same time the government were fully alive to the importance of the subject. During the last week they had given considerable attention to the question, and they had arrived at the conclusion that on the information before them they would not be justified in treating the Shenandoah as a pirate. It would, however, be the duty of the government to see that strict neutrality was maintained, and with that view the vessel would be allowed to remain in port only so long as would be actually necessary for victualing and repairs.

WEDNESDAY, *February* 1, 1865.

The speaker took the chair at half past 4 o'clock.

PAPERS.

Mr. Francis laid on the table copies of the papers and correspondence relative to the branch railway at Echuca.

PETITIONS.

Petitions were presented by Mr. Riddell from the inhabitants of Essedon and its neighborhood, praying the government to purchase and re-open the Melbourne and Essendon Railway; and by Mr. Easey from the inhabitants of Raywood, in favor of the new tariff.

NOTICE OF MOTION.

Mr. Harker gave notice that next day he would move the house into committee of the whole for the purpose of considering the following resolutions: "That it is necessary for the satisfactory representation of the people in this house, that members be compensated for their attendance;" "that in the opinion of this committee such [107] *compensation should be the sum of ——— per annum;" "and that an address be presented to his excellency the governor, requesting that he will cause a sum to be placed on the estimates for the above purpose."

THE POLICE FORCE.

Mr. Crews asked the honorable the chief secretary if it was the intention of the government to bring in a bill to amend the law relating to the police force; if provision would be made for members retiring therefrom; and if the twenty-fourth clause of the present police act was carried out in cases where members of the police force had retired from the service.

Mr. McCulloch said the government intended to introduce such a bill so soon as the tariff was disposed of. In that measure retiring allowances would be provided for. The twenty-fourth clause alluded to had been repealed some years since.

THE CONFEDERATE WAR-STEAMER SHENANDOAH.

Mr. Berry, in rising to call the attention of the government to this subject, would briefly state the object he had in view. That object was simply that no act of the government or people of this colony should tend to complicate the relations of the

mother country with a friendly nation. He did not wish to enter into the question of the rights of either of the two belligerents at all, but only to deal with the question from an English point of view, [Oh, oh!] and to see whether the proclamation made by Her Majesty in 1861 had not been grossly violated in the matter of a vessel now lying in Hobson's Bay.

The Speaker called the honorable member to order. In putting a question no honorable member was allowed to state an opinion or to go beyond the mere facts of the case. [Hear, hear.] Otherwise there was no knowing what discussion might not ensue.

Mr. Berry intended strictly to confine himself to a mere statement of facts. He believed it would not be denied that evidence existed in this city that clearly and unmistakably showed the real name of this vessel to be the Sea King, because on that fact he founded nearly the whole of his remarks. [An honorable member: "There is no such evidence."] Mr. Berry continued to say that the Sea King was a vessel which sailed from London about the 8th October last, bound for Bombay, with a cargo of coals, and all that was heard of her since, that he was aware of, was a report which reached this country, in an English paper, some time back. He had found it in a Manchester paper of 19th November last, which alluded to her under the title of the confederate cruiser Shenandoah, late Sea King. The paper stated, "We received a letter yesterday from part of the crew of the Sea King, who returned to England in the African steamer Calabar. The men state that the Sea King is now called the Shenandoah." So the paper went on to allude to the men who came back after having gone out in the Laurel, and this was an important part of the facts of the case.

In addition to that he believed that within the last few days, since this vessel had arrived in Hobson's Bay, it had become a matter of public report, never denied, and stated in the public newspapers, that she was, without doubt, the Sea King. Besides, he had had placed personally before him still stronger evidence that such was the case. He had seen the depositions of prisoners taken out of different vessels, who stated that it was openly admitted on board, both by the captain and officers, that the original name of this particular vessel was the Sea King.

In fact, the first lieutenant of the Shenandoah came out in the Sea King, while the captain and the rest of the officers came out in the Laurel, and then joined the first vessel at the island of Madeira. The armament of the Sea King was, it seemed, brought out by the Laurel, packed in boxes, and so put on board.

The position he took up was that, under the proclamation of neutrality by Her Majesty, had the Shenandoah returned to any English port after having destroyed other vessels, she would have been instantly seized and condemned, and he could see no reason why, because she had gone a much greater distance, and arrived at a colony of the British empire, that she should be treated differently. The colony was a part of the British empire, and the government were bound to carry out the neutrality laws as if we were within the bounds of the mother-country herself. It was not necessary to state any further facts on this part of her case. At all events, sufficient evidence had been given to cause inquiry as to how it was that a British vessel, sailing for a peaceful voyage to Bombay, and, having subsequently gone into another port, suddenly appeared in another part of the British empire after having destroyed many ves-
[108] sels at sea, some of them *loaded with English cargo and owned by Englishmen.

If that were the case it would not be necessary for him to read any portion of the proclamation, on the strength of which he had now spoken. It was no doubt well known to the government that by the second section it was not only made a misdemeanor to arm or fit out such vessels, but also to send ships out to sea with a view of handing them over, by sale or otherwise, to either of the belligerents. Such persons were not only made subject to punishment, but their ships were liable to confiscation by any officer having competent jurisdiction within the British dominions. He had stated the fact without reference to individuals. If this vessel were proved to be the Sea King, and there was abundant evidence for the government she was, he wished to inquire why the confiscation of the vessel was not carried out under the neutrality proclamation, leaving out of the question who were the parties, or their representatives, indictable for misdemeanor. He doubted if he need go further. The only object he could possibly have was that the facts should be prominently and unmistakably brought under the notice of the government.

He took it that they would be anxious to enforce the spirit of this proclamation the same as at home. [Mr. Francis: "Hear, hear."]

He would, however, point out that, whatever might have been the looseness of construction of this proclamation in the earlier stages of the war, there was no such looseness on the part of the English government now. The honorable chief secretary would bear in mind that the rams fitted out in Laird's yards were stopped by the British government; and, on the other side, the last mail brought news that certain passengers and emigrants from Liverpool to North America were also stopped under the first clause of this proclamation, which prevented enlistment for either of the belligerents.

The fact of the British government enforcing this proclamation so strictly supplied

important additional reasons why every attention and care should be given to the subject. It must be within the knowledge and memory of the honorable chief secretary that all the vessels destroyed on such a cruise as that of the vessel now in Hobson's Bay would at some future time be claimed by the American Government from the British government. Here was this vessel. She had touched at no port, and no one could tell whether or not she had authority from the confederate government, because there was no authority here to test the validity of a confederate commission. It must be clear to any mind that the parties in possession of this vessel were on the horns of a dilemma. If she were the Sea King——

The Speaker. The honorable member is not in order.

Mr. Berry would only say that if she were the Sea King on her voyage to Bombay, as the declaration stated, she might have been seized against the will of her owners and so converted into a pirate. If so, she was subject to be dealt with as having been taken against the will of her owners. If she could not be dealt with as a pirate the owners were on the other horn of the dilemma, insomuch as she had committed a breach of the second clause of the proclamation to which he had alluded, and should be on that ground confiscated by the government. Having brought this matter forward, he should conclude by saying he was quite sure there was abundance of evidence to prove that the vessel in question was the Sea King, and ask the honorable chief secretary, pursuant to notice, whether the government intended to take steps to confiscate this vessel and to punish the officers for a misdemeanor, in accordance with the provisions of the proclamation alluded to.

Mr. McCulloch, in reply, had no hesitation in saying that this question was an important one, and should be dealt with in a most cautious manner. [Hear, hear.] Under all the circumstances of the case, it would be well if at this present time the house did not go as fully into the discussion of the various matters and alleged facts respecting this ship as would be required in the imperial Parliament. The honorable member had stated that this vessel was the Sea King, but what proof had he? [Cries of "Hear, hear," from all parts of the house.] There were the newspaper reports, and a letter addressed to a newspaper in Manchester, that the Shenandoah was the Sea King, but the honorable member had not brought forward one single particle of proof to substantiate anything that went beyond that. [Hear, hear.] He said reports were going abroad in this city, and he (Mr. McCulloch) had heard it stated that the remains of the Sea King were to be seen on the sides of the ship; but was that any evidence of the transfer which it was said had taken place? [Hear, hear.] And even if such were the case, it was a question if the government could deal with the ship as a pirate. [Hear, hear, and cheers.] The government had done a great deal in discussing this question. For the last week they had given a considerable amount of attention to it, desiring to observe as strictly as possible the rules laid down for the guidance of this and all other colonial governments.

[109] *In dealing with this vessel they had not only to consider the terms of the proclamation referred to, but also the confidential instructions from the home government; and, moreover, they had had brought before them the case of a vessel in exactly the same position as the Shenandoah. All the circumstances which occurred with regard to this other vessel were in the possession of the government, and would be weighed in connection with the present matter; but he believed the government would not be at all justified in treating this vessel as a pirate. [Cheers.] While insisting as a matter of course that strict neutrality should be maintained as far as possible, he would observe that this vessel had only been allowed to remain in port so long as was necessary for taking on board the supplies necessary for the support of her crew, and to complete repairs which were necessary to allow the ship to go to sea. Beyond this the government would not move in the matter. [Hear, hear, and cheers.]

Mr. Berry, before the discussion closed, wished to say that he had omitted a good deal of what might be brought forward, being in expectation that his statement would not have been denied. He would like, to make his case complete, to read, for the information of the chief secretary, a deposition given in his presence that day by one of the passengers, a lady, taken by this vessel. [Cries of "Order," and "No, no."] If the matter was of the importance stated, any information given to the government ought to be freely availed of by them. It was only a short deposition, and would not take long to read.

Mr. Higinbotham objected to the course now taken. This was not the proper place or time [cheers] for the honorable member to read a document which might perhaps provoke discussion as to its value and effect. If it was considered at all, it should be considered by the government in private.

Mr. O'Shanassy wished, on the point of order, to speak to the statement made, that this vessel was taken by force at sea, and against the consent of the owners.

Mr. Berry. I did not say so.

Mr. O'Shanassy would, however, point out that in that case the owners would have applied to the British government, who were the proper authorities, and not the colonial government. If this vessel was not taken by force, but sold, then the charge of

piracy fell to the ground. He (Mr. O'Shanassy) concurred in what had fallen from the honorable attorney-general, that an *ex parte* statement ought not to be received in that house. It was only fair to all parties that no favor should be shown either on one side or the other. What did the French government do in respect to the Alabama? They gave her permission several times to refit, and the Florida remained in one of her ports for months. Why then should this colony refuse to do to a vessel which came here, that which other powers were willing to do, and this with experience to guide them? The honorable member might as well have let this matter alone. [Cheers from all parts of the house.]

Mr. Lalor said it struck him that the house was wrong to discuss the matter. His excellency the governor was the representative of Her Majesty, and he alone had full powers to deal with this matter. [Hear, hear.] He (Mr. Lalor) did not know the law of the case, but believed that the governor alone could deal with a vessel belonging to a foreign power. He protested against a discussion which was unfair to all parties, and might compel honorable members to take sides. He hoped the matter would not be pressed further, unless full notice were given, and then both sides could be heard. At the same time, he might mention that he took a view altogether opposed to that of the honorable member for Collingwood. [Cheers.]

The matter then dropped.

From the Age of January 27, 1865.

The Shenandoah is a clipper-built screw-steamer of 709 tons, exclusive of the space occupied by the engines, and of about 260 horse-power. She was built on the Clyde, which has become famous for turning out blockade-runners, and does not appear likely to do discredit to the shipwrights of Glasgow. A wooden ship, with iron frame and iron masts and yards, she was no doubt built for the work in which she is now engaged, and for which she is admirably adapted. Seen from the pier, the Shenandoah presents only the appearance of a smart, trimly-set boat, evidently a swift sailer; but there is nothing rakish about the craft, nor anything that would rouse suspicion as to the pacific nature of her intentions, were she to steam unheralded among the shipping of any port. The disguise could hardly have been more complete or effectual. As the vessel consumes her own smoke, it is not discoverable at a distance that she has steam-power; and she might easily be taken for a merchantman, as indeed she has been by many a captured Federal ship. The only point likely to attract attention is her
[110] length, *320 feet, her breadth being only 32 feet; for the iron rigging would probably not be noticed at any distance. The crew numbers seventy-five, all hands told—rather a small complement for so large a vessel, especially when the adventurous work she has undertaken is considered. Her armament is also small, but is capable of being increased at any any time should circumstances demand it. The steamer carries eight large guns, four rifled Whitworths carrying 40-pound solid shot, and 32-pound shell, and four guns carrying 68-pound solid shot and 56-pound shell. The guns, all new, are magnificently mounted, and are also in excellent order. The Whitworths are calculated to hit at a distance of three miles, and are capable of being elevated eleven degrees. The vessel, however, is confessedly equipped for capturing merchantmen, and not for contending with Federal men-of-war. A single glance is sufficient to show that she is built for speed, and the burnished appearance of her copper bottom shows that she has not idled on the way. At half speed she makes nine knots an hour, and it is evidently her policy in cases of difficulty to trust more to her heels than her armament. The ship is a new one, and this we are informed is her second cruise, which probably means her second voyage, as the present must be the only cruise on which she has appeared in the character of a belligerent under the same name. When once on deck, the merchantman appearance presented on a distant view vanishes.

From a Melbourne paper, (name not given.)

The Confederate cruiser Shenandoah.—In yesterday's publication we gave all the particulars then attainable respecting the confederate war-steamer Shenandoah, which arrived in Hobson's Bay on Wednesday afternoon. A personal visit to the vessel yesterday has enabled us to largely increase our stock of information on the subject, and the result of our inquiries we now place before our readers. Previously, however, we direct their attention to the two accompanying paragraphs, the contents of which throw a light on the history of this new successor of the Alabama. They are from the Home News and the Index, and although apparently referring to different vessels, really have reference to the same, for it now appears that the Sea King of the Home News is the Shenandoah of the Index. The first-named journal, in its publication of the 26th November, says:

"A few weeks ago the departure from Liverpool took place of a steamer called the Laurel, with about one hundred men on board, many of whom had served with Cap-

tain Semmes. It was also asserted that Captain Semmes himself was on board. A dispatch lately received in Liverpool from Madeira is to the effect that the Laurel had been lying in Funchal Bay for several days previous to the 17th of October, and early on the morning of that day she steamed out to sea and met a large screw-steamer, (understood to be the new Alabama,) on board of which were transferred the crew of the Laurel, and cargo, consisting of guns, ammunition, &c. The screw-steamer then made for the direction of Bermuda. (The name of the latter vessel is said to be the Sea King, 1,200 tons, which recently cleared out of the East India dock for Bombay, but whose real destination was Madeira. It is alleged that she has since run on a rock, and it is feared will become a total wreck.)"

The Index, a journal published in London, in the interest of the southern confederacy, has the following in its issue of the 19th of the same month:

"A NEW CONFEDERATE CRUISER.—We have much pleasure in being able to state that almost at the same time when the Florida was treacherously seized in Bahia harbor, the confederate flag was hoisted on a new cruiser at least the equal of the Florida in armament, speed, and general efficiency. The Shenandoah starts upon her career with every prospect of emulating the fame of her predecessors. She is commanded by Lieutenant Waddell, Confederate States navy, and a gallant staff of officers. Having received her crew and armament—everything in fact that constitutes her a belligerent vessel—on the high seas, far beyond any neutral jurisdiction, there can fortunately be no pretense of accusing her of any violation of municipal laws or international obligations. It is evident that Federal commerce is balked of the expected reward of the murderous outrage in Bahia, for already the telegraph has advised us of the doings of no less than three confederate cruisers, the Tallahassee, the Chickamauga, and the Olustee, all of which have recently issued from their own ports, and are busy at work avenging the Florida's fate. To this formidable list of ubiquitous enemies, the New York Chamber of Commerce must now add a fourth; and confederate sympathizers, paraphrasing the familiar 'Le roi est mort; vive le roi,' may exultingly exclaim, 'The Florida is gone; long live the Shenandoah.

[111] *[From our own reporter.]

The arrival of a vessel of war belonging to the Confederate States of America in Hobson's Bay caused no little excitement in the city yesterday, and the object of the stranger's visit was actively canvassed on every side. We mentioned yesterday that Captain Waddell, the commander of the Shenandoah, immediately on his arrival, dispatched one of his officers to Toorak, to report that the vessel had entered the bay, and that under the royal proclamation of neutrality he requested permission to remain in these waters for a short period, for the purposes of coaling, provisioning, and effecting certain necessary repairs to the machinery. As a matter of courtesy, until his excellency's reply was received to the request, the captain declined to allow any person to visit his ship, neither would he permit any communication with the shore. The numerous boating parties which hovered round the ship yesterday morning were politely informed of this determination, and they were forced to content themselves with sailing round the vessel and scrutinizing her exterior. In the meanwhile a meeting of the executive council was called, and the desire of Captain Waddell was fully discussed. According to international maritime law, as expressed in a dispatch from Earl Russell, the secretary of state for foreign affairs, and dated 31st January, 1862, published in the government Gazette on the 24th April, in the same year, it is laid down that vessels of war belonging to a belligerent power are not allowed to enter a neutral port unless they require supplies, coal, &c., or need repairs, and they must comply with the following conditions: They must take in their necessary supplies as soon as they can, as much coal only as will enable them to get to the nearest port in their own country, or to the next port of destination, and then leave the neutral port of refuge as soon as possible. Captain Waddell was in want of coals and provisions, and required a new band to the propeller-shaft of the screw. Under these circumstances the requested permission was granted, but it was not until between 3 and 4 o'clock in the day that the intention was made known on board.

The excitement which prevailed in town was very great, and the desire to get on board was heightened by the belief, which was pretty generally entertained, that the renowned Captain Semmes, of Sumter and Alabama celebrity, was on board, if not actually in command. We can, however, give the assurance that the gallant officer mentioned is not in the ship, but that some of the officers and five or six of the men who served with him in his voyages in both the Sumter and Alabama, are now serving with Captain Waddell in the Shenandoah. From early morning the crowd of persons who proceeded by the Hobson's Bay Railway to Sandridge was very large. Many contented themselves with an observation of the vessel from the end of the pier. The white flag with the thirteen stars placed diagonally in one corner, with the old battle-flag at the fore, being easily discernible from the peak, afforded a clear indication of the whereabouts of the confederate cruiser. Others, notwithstanding the warning

conveyed to them that they would not be permitted to set foot on the decks until the intentions of the government were made known, nevertheless cruised around the vessel, and endeavored, by personal observation, to ascertain whether she was not identical with the Sea King, of which information had already been received. These observers were rewarded for their pains in ascertaining some clew to the apparent mystery by a partial obliteration of the three remaining letters of the last word of the former name on the trail-board. However, Captain Waddell, finding how anxious the people of Melbourne were to inspect his ship, at length permitted visitors to come on board. On this announcement being made known, hundreds of persons availed themselves of the accorded privilege. Every licensed boat was made available for the service, and two or three steamers crowded with passengers plied between the Sandridge pier and the war-vessel in the bay. The visitors were most courteously received by the officers, who afforded any information requested of them, and on the departure of each successive party, the welcome they had received was acknowledged by three cheers. A tolerably stiff breeze was blowing in from the south, and a small whale-boat, in rounding to at the stern of the vessel, was caught by the wind and capsized. A lady and two gentlemen who were in the boat were thrown into the water. Some alarm was created by this unlooked-for catastrophe. The lady clung to the edge of the boat most courageously, and the whole three were speedily rescued without suffering anything further than a rather unpleasant immersion.

The Shenandoah has brought eleven prisoners to this port, including Mrs. Nichols, the wife of Captain Nichols, and the stewardess of the Delphine, last captured. They all went on shore yesterday morning. At sea the prisoners were kept in irons at
[112] night, *except those on parole. No complaint as to treatment received on board has been made by any of the prisoners. The officers of the confederate ship visited the city yesterday, and inspected the different public places, including the legislative assembly.

The Shenandoah, one of the latest adjuncts to the confederate navy, is a vessel of 1,160 tons English register, and about 1,400 American. She was built in the Clyde a short time ago, and having become the property of the confederate government, sailed from the East India docks for Madeira. Her appearance is that of a merchant-clipper; and were it not that the muzzles of four guns peered from the ports of her broadsides, no one would ever think of taking her for a man-of-war. Her length and general build would at once indicate her as being a fast sailer, and we are informed that her average is 13 knots; while under reefed canvas she has frequently gone at the speed of 11 knots.

The upper deck of the Shenandoah presents no extraordinary features. Her armament consists of eight guns. Forward there are two 32-pounders, rifled Whitworths; amidships, four 68-pounders, smooth bore; and aft, two small 12-pounders. The between decks are very lofty, being about 8 feet in height. The space is kept clear, and with the exception of a small table and two or three cushioned forms, nothing obstructs the center of this deck. Even the hammocks of the crew are stowed out of reach, and all the furniture and effects visible are a few neat-looking trunks, which, from their appearance, seem to have been taken from some prize-vessel. The cabin is the ordinary saloon of a merchant-ship. The state-rooms, two good-sized apartments, are occupied by Captain Waddell. Nearly all the furniture they contain has been picked up on the cruise—a sofa from one prize, a chair from another, and so on with all the articles. The saloon is the ward-room for the officers, and their sleeping-rooms are ranged on either side of the cabin. They, too, have been fitted up in the same manner as the commander's.

Having said so much about the vessel, we now turn to the crew. The commissioned officers number about twenty, a very large proportion considering the smallness of the crew. The officers wear a gray uniform with gold facings, and Captain Waddell wears two gold bands round the sleeve, denoting his rank, after the fashion of the officers of the British navy. Captain Waddell, whose personal appearance is highly prepossessing, is a thorough sailor. He has been twenty-three years in the American Navy, and on the commencement of hostilities he proceeded to South Carolina to fight for his State in the cause of the South. Among the number of her officers are three who have served in the Alabama, and were in her when she was sunk by the Kearsarge, off Cherbourg. They are Mr. Bullock, the master; Mr. Smith, the paymaster, who was then the captain's clerk; and Mr. O'Brien, the engineer, then third assistant engineer. The crew are seventy-five in number, and comprise natives of nearly every country in Europe, and one or two negroes, but the majority are British subjects. On ordinary service they wear a rough greyish-brown uniform dress. A very large number of the men have joined since leaving the port of departure, and have been captured in the prizes. They are a happy and apparently a well-contented lot; express great confidence in their commander, and are well pleased in the service in which they are engaged.

We now proceed to give some account of the Shenandoah from the time of her setting out on her present cruise, some three months ago.

On the 8th of October, 1864, a small party left Liverpool in a steamer called the Laurel, and on the 14th of the same month arrived at Funchal, the capital of the island of Madeira. There she was regarded as a thorough blockade-runner in the confederate service; but the men were not allowed to go on shore. Some short time previous to the arrival of the Laurel, some Polish passengers had visited the island, and quitted, forgetting the hotel accounts they left behind them, and the inhabitants were made to believe that the crew of the Laurel were men belonging to the same nation, *sans argent*, so that their presence on shore was not much cared about, at least by the hotel-keepers.

On the 18th of October a vessel entered the harbor and steamed up to the east side, close alongside the Laurel. This vessel was the steamer now in Hobson's Bay. She had arrived from London, having been purchased there for £45,000; and the crew, or part of them, of the small steamer, having been transferred on board the new purchase, she quitted the harbor, and when far beyond the jurisdiction of Portugal the confederate flag was hoisted, and the vessel was christened the Shenandoah. Not a box had been opened up to this time; and now Captain Waddell found himself in command of a ship of war, commissioned and equipped to deal destruction to the merchant-service of the Federal States. The crew at this time only consisted of twenty-three officers and men, a very small complement, indeed, for a vessel of this size. After deducting the number required for the engineer's department, stewards, &c., only ten remained for working the vessel, or five in a watch. At the outset all was con-
[113] fusion, but the officers stripped off *their jackets and assisted the men. The plan adopted was to steam by day and sail by night. Captain Waddell at once kept out in the ocean, always out of sight of land.

On the 29th of October, in latitude 16° 47′ north, longitude 26° 43′ west, when the Shenandoah had only been out ten days, the word was passed that a vessel was in sight. The royals were set and the cruiser bore down in chase with the English colors flying. The stranger hoisted the American flag, and a gun fired across his bows brought him to. The vessel, which was taken as a prize, proved to be the bark Alina, Captain Staples, with a cargo of railway-iron, bound for Buenos Ayres, and from thence to Akyab for rice. The master and mate, with a crew of ten men, were transferred to the Shenandoah, and eight of the men immediately joined the confederate service. The cargo was valued at $38,000, and the bark, which was scuttled, at $50,000. The crew of the confederates had now been increased to twenty-nine men before the mast, and the ship was consequently better worked.

On the 5th of November, at daylight, in latitude 7° 38′ north, longitude 27° 46′ west, the cruiser got under steam and proceeded in chase of a schooner, which was reached at 7.30 a. m. She proved to be the Charter Oak, 400 tons, from Boston, bound to San Francisco, with an assorted cargo. The crew having been removed, she was burned. The schooner was valued at $22,000. Captain Gilman, his wife, and his sister were taken on board the cruiser. The last-named was the widow of a corporal in the Federal Army, who was killed at Harper's Ferry. Captain Waddell gave her his own cabin and the whole party were well treated. Private property was respected, but a sum of $200 was taken from Captain Gilman and given to his wife as a present from the confederate government, on the condition, which she promised to comply with, that she was not to give it to her husband. A quantity of preserved tomatoes (about 2,000 pounds weight) was taken, and the ship's company have since been living upon tomatoes.

On the 7th November, two days afterward, in latitude 6° 28′ north and longitude 27° 6′ west, the bark De Godfrey, bound from Boston to Valparaiso, was fallen in with. Her cargo consisted of 400 barrels of beef. Her crew consisted of twelve men, nine of whom volunteered to join the southern service. The vessel was burned, and cargo destroyed. On the 9th of November a Danish brig was communicated with, and the master consented to take Captains Staples and Hallett, with the four mates and two men who had been captured, in consideration of receiving from Captain Waddell a chronometer, a barrel of beef, and a barrel of bread. The prisoners were transferred, and the brig departed on her way to Rio Janeiro.

On the 10th November, at daylight, in latitude 4° 20′ north and longitude 26° 39 west, the brig Susan, of New York, Captain Hansen, was captured with a cargo of Cardiff coal. She was scuttled, and two seamen and a boy were shipped. The master himself wanted to volunteer, but he was not pressed. When the Susan sank, at 10.30 a. m., she went down bow first, and the main truck sank while the stern was above the surface of the water.

On the 12th November, in latitude 2° north and longitude 28° west, the clipper-ship Kate Prince, of Portsmouth, New Hampshire, was seen. She was observed on the evening from the mast-head on the port beam, and the course of the Shenandoah was changed so as to cut her off. All the prisoners, some fifteen in number, were transferred to this vessel, which was bound to Bahia, with 1,700 tons of coal. The cargo was sworn to be English, and Captain Waddell bonded the ship for $40,000. Captain Libby, the master, in return, sent to the cruiser two barrels of potatoes.

On the same day, and in the same latitude, the bark Adelaide, of Baltimore, bound to the River Plate, hove in sight. She had a neutral cargo on board, and the vessel was bonded for $23,000.

On the day following, in latitude 1° 40′ north, longitude 28° 24′ west, the schooner Lizzie M. Stacy, of Boston, bound for Honolulu, Sandwich Islands, with an assorted cargo, was captured and burned. Her crew, three in number, volunteered for the service. Among the number was a Baltimore negro, named Charles, who, singularly enough, recognized another negro named John, captured in the De Godfrey. The two niggers had lodged in the same house, shipped in different vessels, and were afterward captured by the same cruiser, within a few days of each other.

About this time Captain Waddell observed a vessel in distress, with her mainmast cut away. She would not make any signal, and although there were five vessels around, she would not notice any of them.

On the 24th of November the Shenandoah started in chase of the ship Rubens, of Stockholm, bound to the Cape of Good Hope, but did not succeed in coming up to her. This was in latitude 24° 44′ south, longitude 31° 28′ west. She also showed colors to an English ship on the same day.

[114] On the 4th December, in latitude 34° 47′ south and longitude 12° 30′ west, the whaling bark Edward was captured and burned, after the stores had been removed. One seaman was shipped, but the remainder, consisting of Portuguese, were not pressed. They were afterward landed with other prisoners at Tristan d'Acunha, on the 27th December. Captain Waddell here bought some beef and sheep, and in return gave the inhabitants sixty days' salt provisions. The last capture was made on 29th December, in latitude 39° 10′ south, longitude 69° east, the bark Delphine, Captain Nichols, bound for Akyab from London, for a load of rice. She had on board about 300 tons of cargo. The vessel was burnt, and the crew, eight in number, were shipped on board the confederate. On one occasion the Shenandoah chased a steamer which was proceeding with all sails set. After going three or four miles, an impression was formed that she was a British man-of-war, and the chase was at once abandoned. Since his arrival in port, Captain Waddell believes this vessel to have been Her Majesty's ship Brisk, recently arrived at Sydney. The process of boarding was always looked forward to by the officers and crew of the Shenandoah with the greatest interest. Everything worth having was first taken from the prizes, and the hatches, after being filled with straw and tar, were set alight. Although the ordinary dress of the confederate service appears to be a dark brown, the men are habited in various costumes, as occasion requires. At one time the cruiser, with stars and stripes flying, bore down upon a vessel, and in answer to the usual hail announced herself as a Federal man-of-war, but the strangers replied by hoisting Danish colors. Sunday has always been strictly kept on board, and on that day no manner of work, further than that actually required for working the vessel, has been accomplished. From the latitude of the Cape, the Shenandoah has come direct under sail to this coast without calling at any place. Captain Waddell requires to remain a few days, in order to repair the vessel's machinery, and as an earnest of his intention, Messrs. Langlands & Co., have been engaged to effect the necessary repairs. Captain Nichols, of the bark Delphine, states that when his ship was boarded, the papers were examined, and being found American, were taken possession of, with the nautical instruments, and the provisions that were required before the ship was burned. The persons taken off consisted of the captain, eleven men and a steward, also Mrs. Nichols and child. Several ships were hailed, but they all showed English colors. The papers of the Nimrod, formerly the Sancho Panza, bound to Adelaide, were investigated.. We understand there is a nephew of General Lee, Mr. Sydney Smith Lee, on board the confederate ship. In conclusion, we may mention that Captain Waddell has most courteously thrown his vessel open to the inspection of the public, and that steamers and small-boats ply to and fro at all hours of the day.

MR. FELLOWS'S OPINION.

To the editor of the Age:

SIR: Mr. Fellows is, no doubt, a good special pleader, and a sound *nisi prius* lawyer; but beyond this I cannot defer to his opinions. Common sense tells us that foreigners who come within our jurisdiction and receive the protection of our laws are bound by them; and, moreover, that the ship in which they come may not, whether a ship of war or not, be made a sanctuary for criminals. His opinion, however, seems to me as much opposed to law as common sense. The foreign-enlistment act, 59 Geo. III, cap. 69, makes enlisting in a foreign service a misdemeanor, and "any ship" having on board such persons, may be prevented from proceeding on her voyage. Mr. Fellows, in the genuine special-pleading tone, argues that "any ship" does not include ships of war, because the act imposes a penalty on the "master;" so at least I understand him. There are certain rules of construction which I think he has forgotten. It is a maxim, "*Ubi lex est specialis et ratio ejus generalis, generaliter accipienda est.*" If to

the application of the maxim in this case he replies that it is only applicable to ships within the jurisdiction of the law, I answer, all within the protection are necessarily within the jurisdiction of the law, whether men or property. In fact, the right of search (an expression usually limited to the search of neutral vessels at sea) was fully discussed in 1812, and then recognized by Parliament, the only question reserved being whether the continued exercise of the right was expedient. If belligerents may search neutrals to ascertain if they are supplying the munitions of war, it follows that neutrals may search belligerents, if they have the power, to ascertain if they are not violating the laws of the country from which they are seeking temporary relief and protection. I may observe that the act also makes it a misdemeanor to augment the warlike force of any foreign armed vessel arriving in the country. How is such an augmentation of the warlike force of the vessel to be ascertained except by searching
[115] her? And how is it to be rendered inoperative except by *detaining her? This alone is sufficient to show that "any ship" was intended to include all ships, whether ships of war or merchantmen. As I think that the government has acted with courage and wise decision in this matter, as well as in perfect conformity with law, I trouble you with this communication.

A BARRISTER.

From a Melbourne paper dated February 16, 1865.

SEIZURE OF THE SHENANDOAH.—Great excitement prevailed in town yesterday relative to the alleged seizure of the Shenandoah by the Victorian government, and it was stated by many persons that the government had overstepped their powers in making such a seizure. It will be seen, however, that no seizure at all was made, and that the authorities merely restrained British subjects from assisting in repairing the vessel until the neutrality regulations had been observed. Taking up the narrative of events at the point reached in our yesterday's issue, we may remark that the surmise was correct that an attempt would be made to launch the Shenandoah yesterday morning. At about a quarter to 5 a. m. the steam-tug Black Eagle was seen approaching the ship, and when within hailing-distance was challenged by the sentries who are stationed on the piers on either side. The reply to the challenge was that the tug had been engaged to come at that hour for the purpose of towing out the Shenandoah. The master of the tug was forbidden to approach any nearer, and after some parleying he steamed out again.

At 3 o'clock yesterday afternoon Mr. Superintendent Lyttleton, who had been to Melbourne for instructions, returned to Williamstown, and in accordance with an order which he had brought from the governor withdrew the police who had been put in charge of the Shenandoah. A considerable number of people had crossed over from Sandridge in expectation of some sensational scene, but the affair passed off very quietly. The repairs of the vessel are now completed, and when she has taken in some coal, she will be ready to proceed to sea.

From the ministerial explanation given below, and which was made in the house yesterday, it will be seen that four men, British subjects, were arrested on Tuesday evening upon leaving the Shenandoah, and that one of these was the man Charlie, for whom the warrant had been issued.

When arrested they gave their names as James Davison, Franklyn Glover, ——— Mackenzie, and ——— Walmsley. They were brought up before Mr. Call, police magistrate, this morning, and shortly examined; but as Mr. Call had to attend the police court at Footscray, he adjourned the inquiry until the following morning.

THE MINISTERIAL STATEMENT IN THE ASSEMBLY.—As soon as the speaker had taken the chair in the legislative assembly yesterday,

Mr. O'Shanassy rose and said: Seeing the honorable the chief secretary in his place, I would wish to ask him without notice if he would be good enough to lay on the table a copy of the correspondence that has passed between the government and the commander of the confederate steamer Shenandoah since her arrival in this port.

Mr. McCulloch said: I cannot at present consent to lay the correspondence on the table of the house, as it would be undesirable to do so. If the honorable member wishes information as to what has been done with the ship, I have no objection to make a general statement on the subject.

Mr. O'Shanassy: My reason for asking that the correspondence should be laid on the table is that honorable members, and also the people of the country generally, should know exactly what has been done. In a general statement the information is not so correct; but I do not mean that it is intentionally so. If there are any reasons for withholding the correspondence, I would not press for it.

Mr. McCulloch: This correspondence passed between his excellency the governor and the commander of the Shenandoah. It was not with the government. As honorable members are aware, this vessel arrived in the bay some three weeks ago. The captain at once put himself in communication with his excellency, and asked that he might be

permitted to have certain repairs made, and to obtain such supplies as were necessary to enable him again to put to sea. The government at once put themselves into a position to ascertain from all dispatches that had been received, and by giving the fullest consideration to Her Majesty's proclamation, the course that should be pursued. The result was that Captain Waddell was informed that he would obtain liberty to make all necessary repairs to enable his vessel again to go to sea, and to take in necessary supplies of provisions. At the same time his attention was called to the [116] necessity of his *keeping within the strict terms of neutrality. Captain Waddell acknowledged the act of the government, stating at the same time that he would maintain a strict neutrality. Some time elapsed and nothing was done, in so far as few repairs were being executed on the ship. The government, in order to secure that a position of strict neutrality was maintained, appointed a board to inquire and report as to what repairs were necessary to render the vessel fit to go to sea; not that she should be so repaired as to make her better fitted as a war-ship, or for the purpose for which she was fitted out, but that she should only be made fit to go to sea from this port. It was found that certain repairs were necessary, and that for the completion of those repairs the vessel would have to be taken on the slip; and here I may remark that it has been stated that this is the government slip, but it is nothing of the kind. In one sense it is the government slip, but in another it is not, as it has been leased to a private individual. The ship has been on the slip for several days. Within the last two or three days information has been forwarded to the government to the effect that there were certain parties concealed on board the ship—Englishmen who had gone on board since the vessel arrived in this port, and that with the view of joining the ship as seamen. Such being contrary to the provisions of the foreign-enlistment act and the proclamation of Her Majesty, the government found they could not shirk dealing with the matter, and, as the information was furnished on sworn affidavits, the government felt themselves obliged to take immediate steps to ascertain if the neutrality of the port had been violated; for, while the government was bound to observe strict neutrality toward the vessel, her officers and crew, they were also bound to demand that Captain Waddell should with equal strictness observe the neutrality of the port. [Cheers.] Well, a warrant for the apprehension of an Englishman named Charley, a native of London, was issued by the Williamstown bench. The warrant was presented on Monday evening. The captain was not then on board, and so the warrant was presented to the first lieutenant. That officer refused to allow the inspector of police to go on board to ascertain if Charley was on board, at the same time giving him distinctly to understand that there was no such person on board. Well, the government did not wish at that time to take decided steps, as the captain was not on board when the inspector visited the ship. The inspector was, however, instructed to go on board again when the captain was there. He went next morning (Tuesday morning) and met the same reception from Captain Waddell, who stated on his honor and faith as a gentleman and an officer that there was no such person as Charley on board. Well, the government had so many distinct statements made to them by persons resident in Melbourne that there was such a person on board, that they considered they were obliged and bound in duty both to this colony and to the mother country to take all proper steps to ascertain whether such was the case or not—whether this man was on board or not. The government having given a considerable amount of anxious attention to all the points on the subject, which may yet turn out to be a matter of very considerable importance, came to the conclusion that the governor should issue an order under the foreign-enlistment act, and, looking to the strong proofs we had before us of the violation of the act, we felt bound to issue orders to all Her Majesty's subjects that they should refuse to continue the task of repairing the vessel, and should not give any aid in launching the ship till the government was satisfied that the documents that had been put in their hands, stating that there were Englishmen on board, were incorrect. At the same time a letter was sent to Captain Waddell calling his attention to all the circumstances of the case, and asking him to reconsider his determination, pointing out to him that this was a violation of an act of the British Parliament by a British subject, and that he ought to put the government in a position to ascertain whether that person had been guilty of violating the acts of this country. His attention was also called to this circumstance, that it was desirable for his own sake, if those statements were false, that he should put the government in a position of being able to prove that they were false, and of bringing the parties to punishment for making such statements. This letter was delivered to Captain Waddell yesterday about 6 o'clock in the afternoon, and the messenger waited for an answer. At 10 o'clock last evening a letter in reply was forwarded to the commissioner of trade and customs. And here he wished to point out that Captain Waddell kept the messenger waiting for four hours. [Hear, hear.] The letter, which was dated last night, was dispatched by Captain Waddell at 10 o'clock—at 10 o'clock last night. In this letter he again refuses to allow the warrant to be executed, or rather he states that he did not prevent the execution of the warrant, because it was for a person named Charley, and there was no such person on board the ship. [Cries of "Oh, oh."] He again

repeated his statement that there were no parties on board the ship but those who were on board when she entered the bay, and stated at the same time that he had ob-
[117] served the strictest neutrality. This letter came into my possession at 1 *o'clock in the morning, and at 7 o'clock this morning I was informed that four men last night were detected leaving the vessel about 10 o'clock at night, or about the time the document furnished to me was dispatched. These men were in a waterman's boat, and the water-police endeavored to overtake them, but did not succeed in doing so until they arrived at the Sandridge railway-station. Well, on examination we find that those parties were not on board when the ship came into the port, but joined here. [Cheers.] They were persons who ought not to have been allowed to join, and who ought not to have been concealed. [Cheers.] We have now discovered that one of those four persons who left the ship at 10 o'clock last night, or about the time the letter was dispatched, was the very man Charley for whom the warrant was issued. [Cheers.] I think the course the government has taken will justify us, not only in the estimation of the house, [cheers,] but I am sure it will be admitted that the government has taken the proper course to carry out and support the intention of the British Parliament in respect to the foreign-enlistment act [cheers] and the intention of the proclamation of Her Majesty with respect to the observance of neutrality. [Cheers.] There is no doubt that this man Charley, for whom the warrant was obtained, and of whom we were assured that he was not on board, was in the uniform of the ship—on various occasions at all events. [Hear, hear.] Now, it appears to me and to the government that if anything can be a violation of strict neutrality, this is it. [Cheers.] My honorable colleague the minister of justice reminds me that we have not yet proved that this man Charley wore the uniform of the ship, but we have the statement of various parties that such was the case; and as they are to be brought before the police-court to-morrow morning, I have no doubt but further information will be received on the point. [Cheers.] In the mean time, the government have obtained what they really desired to obtain in the first instance—that all the parties who joined the ship illegally should be removed from the vessel. [Cheers.] That having been done, we have removed the suspension of leave to Her Majesty's subjects to carry out repairs, and to assist the vessel off the slip. [Hear, hear.] Captain Waddell will, of course, be ordered to remove from this port at the very earliest possible date. [Cheers.]

Mr. Levey: So far as I gather from the statement of the honorable the chief secretary, the government is not aware, even now, that all the persons who may have joined the ship here are out of her. [Hear, hear.] Captain Waddell, it seems, denied the authorities the right to search the ship for British subjects who were said to be on board in violation of British laws, and he further denied that the person for whom the warrant was issued was on board, while, as has since been ascertained, the man was on board. I think that the fact of persons having left—persons whose presence on board was denied—affords good reason for believing there are other persons on board. [Hear, hear.]

Mr. McCulloch: The particular warrant that was issued for this particular individual has been satisfied, and if further warrants are issued for other persons who may be on board, the position of the government will be altered. It may be that there are other persons on board, but we have no information to that effect. I may state that it is the intention of the government to refer all the particulars of the case to the imperial government, and the various points in the case that have turned up. [Cheers.]

Mr. O'Shanassy: This is an important and somewhat novel case for us. The honorable the chief secretary states that the government issued a warrant for the apprehension of a particular person, and on the strength of that warrant it was sought to establish a right of search.

Mr. McCulloch: The government had not issued the warrant. The warrant was issued by a police-magistrate at Williamstown, on sworn information. Neither was there any right of search claimed by the government, though Captain Waddell laid great stress upon that. Now, it was nothing of the kind. The warrant was simply for the apprehension of one of our own subjects who had committed a breach of our own laws. [Cheers.]

Mr. Berry: It appears to me that the captain of this vessel took advantage of the privileges of a neutral port, and how was the government to see that the neutrality of the port was observed, as it was their duty to do, if the police were not allowed to execute a warrant, not against the ship or the captain of the ship, but against a British subject. [Hear, hear.] As to the question of the right of search set up by the captain, it has nothing to do with the case, and seems to me to be a mere subterfuge. [Cheers.] It is the duty of the government to see that this vessel strictly observes the neutrality proclamation, even though they should have to go on board against the will of the captain or any of his officers. For anything that can be known to the government, unless an examination is allowed, it might be that this vessel is now being fitted up both so as to increase her speed and render her more efficient for war purposes.
[118] Now, I *again ask, can that be ascertained without an examination? It may be that at the very last moment it will become the duty of the government to stop

the vessel. [Hear, hear.] If the government cannot do so, then this neutrality proclamation simply affords additional facility for the vessel of a belligerent power entering a neutral port to be better equipped for war purposes.

The matter then dropped.

MEETING AT THE CRITERION.—A public meeting was yesterday convened by unsigned placards, to be held at the Criterion Hotel, Collins street, to "protest against the action of the government in seizing the Shenandoah." The meeting was convened for half past 3 p. m., but shortly before that hour a written notification was placed outside the Criterion Hotel, of which the following is copy:

"SHENANDOAH.

"This vessel has been released by the government.

"*Opinion of Mr. T. H. Fellows.*

"'*Question.* Have the government of this colony any right to search the Shenandoah for the alleged offender Charley?—*Answer.* I am of opinion that the government have not the powers which they claim. A ship of war, commissioned by a foreign government, is exempt from the jurisdiction of the courts of other countries.'

"There will, therefore, be no meeting."

A very large number of persons assembled outside the hotel, and appeared very dissatisfied with the conduct of the conveners of the meeting. After considerable delay a number of persons entered the large room of the hotel, and Mr. George Robertson mounted a table and addressed the assemblage. He said he did not know who were the original promoters of that meeting, but he and other citizens came there to express their opinions on the action of the government. He therefore moved that Mr. R. Kent take the chair.

Mr. Moton Moss seconded the reso ution; which was carried.

Mr. Kent said that he was called upon quite unexpectedly. The original promoters of the meeting had deserted their post; still the citizens wished to express their opinions on the subject. He was not identified with either the North or the South, but the question which he submitted to the meeting was, had the government acted in accordance with the principles of international law? The government were bound to afford the Shenandoah opportunities for repairing damages, &c., yet she had been seized, and he was surprised that on the previous evening not one honorable member of the assembly had put the question to the government why this step had been taken. He had no doubt that that question would be put that night, but meantime it was right for the citizens to express their opinions. The question involved large issues; nothing less than whether peace or war was to exist between England, her colonies, and the South American confederacy. He concluded by inviting speakers to come forward and address the meeting. After a sport pause,

Mr. G. Robertson said he appeared in the cause of common sense. If no one was prepared to move a resolution in pursuance of the object for which the meeting was convened, he should after the lapse of a few minutes move that the meeting adjourn.

A Voice: I propose that, mean time, we all adjourn for nobblers. [Laughter.]

Mr. Robertson: We can do that at any time and not at your expense. [Laughter.]

Mr. Freame defended the conveners of the meeting, as the opinion of Mr. Fellows and the release of the vessel removed the necessity for the meeting. [Considerable confusion ensued. The speaker was met by cries of "Bring forward your resolution," and "You cannot excuse those who called the meeting and are not here."]

Mr. McKay declared that he had seen Mr. Longlands a few minutes prior to the meeting, and he had positively stated that the Shenandoah was not released.

Mr. Ferguson flatly contradicted Mr. McKay's statement.

Mr. Moton Moss here rose and wanted to know what was the use of Mr. Higinbotham as a law-officer of the Crown.

Mr. Philip Cohen then rose and said that he was not in any way identified with the origination of that meeting, but he came to see what was going to be done; and now that a number of citizens had assembled, an expression of opinion should be made as to the action of the government in the seizure of the war-ship Shenandoah. He would [119] *ask that meeting, if the Shenandoah had been a Federal ship, would the government of this colony have dared to lay a hand upon her? [Loud cries of "No, no;" and cheers.] No; they would have shaken in their shoes before daring such an attempt. Had the Shenandoah been a war-steamer belonging to the smallest, the most trivial power of Europe, would the government have dared to touch her? [A voice, "Certainly not; but they seize a pirate."] He contended that she was not a pirate. She had been acknowledged by the government as a ship of war belonging to a belligerent power; and being such, the government had no right to lay hands upon

her. [A voice, "She is a British steamer, the Sea King, and not the Shenandoah."] He considered that when 6,000,000 or 8,000,000 men, descended from the Anglo-Saxon stock, unanimously demanded the right of self-government, they should be granted that right; and when a ship belonging to a confederation struggling for that right came into a neutral port, and was allowed to be placed on the slip for repairs, when she was, in fact, powerless, it was an act of cowardice in any government to seize her by force. [Prolonged cheers.]

Mr. Quinlan, barrister at law, said he believed there was no resolution before the meeting; in order to get the proceedings into a business-like shape, he would submit a resolution, "That the proceeding of the government was ill-advised in seizing the Shenandoah, and likely to endanger our happy relations with a state which was likely to be very powerful." He appeared before that meeting as the upholder and friend of all downtrodden nationalities, as the friend of those who strove to be free. He felt sure that the citizens of Melbourne were too well informed as to the *casus belli* between the North and the South to believe that it was a slave question. In order to disprove the assertion of those who held the view that the slave question was the cause of the war, he need only refer to the letters of the Times correspondent, and the writings of Mr. Spence. No, it was not a slave question; but rather a question of free trade *versus* protection. [A voice: "So is the present meeting."] The action of the government was undoubtedly ill-advised, and in order to support his assertion he would not rest on his own opinion, but referred to the greatest authorities on international law. It had been said that the Shenandoah had been seized for a breach of the foreign-enlistment act. Now, in order to understand the question it was necessary to point out the radical difference which rested between municipal and international law. The chief object of the latter was to deprive war of some of its horrors, to infuse the elements of Christianity and humanity into contests between nations. On the other hand, municipal laws were of local and civil application. The foreign-enlistment act was a municipal act, which prohibited British subjects from enlisting in a foreign service to fight the battles of foreign nations; but this did not justify the government in attempting to serve a civil search-warrant on a ship of war. The government had no right under the circumstances to board and seize the ship. This was the opinion of Wheaton, one of the greatest authorities on international law. No civil power had jurisdiction over a man-of-war. It might be said that the Southern States of America were not a nation, but he contended that their valor and unanimity entitled them to be considered an independent State, *de jure*. On reviewing the history of the struggle between the American States and England, which resulted in the declaration of American independence, he contended that the South was justified in the course which it now adopted. Had the American States in 1777 failed to establish their right to self-government, they would have been treated as rebels, and would have been liable to all the disabilities arising therefrom. But they were victorious. In like manner the Southern States had for four years upheld the cause of downtrodden nationality in the face of the greatest difficulties, and had proved that *de jure* they were a sovereign power. He believed that their efforts would be ultimately successful, just as the American States had secured their independence in 1777. Though the South was not recognized by the States of Europe as a sovereignty, that was not necessary to an existence as an independent state. In this assertion he was borne out by the authorities on international law, from the days of Cicero downward. ["Oh, oh," and laughter.] They might cry "oh, oh," but he would inform those who did so that Cicero wrote a work entitled "De Republica." He held that the South was not only a sovereignty *de jure*, but also *de facto*. He was glad to learn that the opinion of the Hon. Mr. Fellows was averse to the action taken by the government.

In conclusion, he said that he regarded the course adopted by the government as likely to interfere with our happy relations with what was likely to become a great and glorious nation. [Cheers and confusion.]

Mr. Rowe seconded the resolution. He considered that the government had been guilty of a breach of the rules of ordinary hospitality. When the ship first arrived the captain had applied to the governor for permission before even he allowed a man to go ashore. Certain facilities were given her for repairing; but it was not
[120] till she was on the *slip, in a defenseless state, [cheers,] that it was resolved to seize her. In fact we had seized a guest whom we had invited to our table. Nothing could surpass this violation of law, not even the seizure of the Florida. He regarded the question as a colonist, and urged that the South was now engaged in a struggle in which this colony, or the Australian colonies, might some of these days be involved. [Cries of "No, no."] He said yes, for the war was simply in support of a demand for the rights of self-government. As to the rumors about stowaways, he had it from Captain Waddell himself that up to the time of his ship being placed on the slip, when she was defenseless, he caused a strict search to be made; but once upon the slip, it was very easy for men to be surreptitiously placed on board. [A voice: "A Federal dodge."]

After much confusion, and some irregular remarks from various speakers, the resolu-

tion was read in an amended form, as follows: "That the course adopted by the government in seizing the Shenandoah was ill-advised, and likely to be subversive of our friendly relations with neighboring neutral states."

Mr. McKay, amid loud expressions of disapproval, moved as an amendment, "That this meeting approves of the steps taken by the government in detaining the Shenandoah until a full investigation has been instituted." He contended that the original motion condemned the government without reason. The vessel was not the Shenandoah at all; it was the Sea King, built on the Clyde; and the Southerners had, in his opinion, no more right to send out such privateers than John Mitchell would have had. [Confusion.] The man who carried on the Irish rebellion had just as good a right as these southerners had.

Mr. P. Cohen said that he thought it was highly improper for either northern or southern partisans to interfere at that meeting, as it was called for the purpose of giving British inhabitants an opportunity of protesting against the conduct of the government. [Hear, hear.]

The confusion, which had been increasing throughout the meeting, here reached its climax.

Mr. Herberson rose to address the meeting, and remarked that those who had preceded him had made a mistake in addressing the audience as "gentlemen."

This uncomplimentary allusion was sufficient to insure the speaker being hissed down.

Mr. J. W. Randall next appeared on the table, and was met in the usual noisy manner. After some prefatory remarks, he said that he had just returned from Williamstown, and had there been credibly informed that emissaries of the Federal Government had offered seamen of the Shenandoah sums varying from £50 to £100 to desert and inform against the captain. [Cries of name, name.] He strongly deprecated such proceedings, and objected to the course adopted by the government under the advice of the Crown law-officers, Messrs. Michie and Higinbotham, who understood international law so little that they had to be set right by Mr. Fellows. In fact, the government knew as little of international law as they did about tariffs. He protested against the public being thus dragged through the dirt and made subjects of ridicule for the English press, at the instance of a government who had no right to act in the manner it had presumed to do. [Cheers.]

The amendment was then put and lost, and the motion was put and declared carried, amid loud cheers.

A vote of thanks to the chairman, and three cheers for the Shenandoah, brought to a close one of the most disorderly meetings which has ever been held in Melbourne.

From the Herald of February 17, 1865.

THE SHENANDOAH RECRUITS.—At the Williamstown police court yesterday, four men, named James Davidson, *alias* Charley, Arthur Walmsley, William Mackenzie, and Franklin Glover, were brought up before Mr. Call, P. M., Mr. Hackett, P. M., and Mr. Mason, J. P., charged with a breach of the foreign-enlistment act. The information in each case stated, "That being a natural-born subject of the Queen, you did unlawfully, knowingly, and without the leave or license of Her said Majesty for that purpose had and obtained under the sign-manual of Her Majesty, or signified by order in council, or by proclamation of Her Majesty, enter yourself and agree to enlist and enter yourself to serve as a sailor, and to be employed and serve in and on board a certain vessel of war, fitted out, used, equipped, and intended to be used for warlike purposes in the service of a certain foreign power, province, or people, or part of a foreign power or people, exercising and assuming to exercise the powers of government, to wit, the Confederate States of America."

The prisoners were thus described: Davidson, as a native of Scotland, aged
[121] 22; *Walmsley as an Englishman, aged 17; Mackenzie as an Englishman, aged 22; and Glover as an American, aged 24.

Mr. McDonnell, instructed by a clerk from the Crown law-offices, appeared for the prosecution. The prisoners were undefended.

Mr. McDonnell asked for an adjournment, as he had only just been instructed, either for two hours or until the next day.

The prisoners, however, said they were ready to go on.

The bench, therefore, thought it would be unfair to keep them in custody any longer than was necessary.

Eventually the case was adjourned for an hour.

On the court resuming, Mr. McDonnell said that the proceedings were instituted under act 59 George III, cap. 69, commonly known as the foreign-enlistment act. He would prove that the prisoners went on board the Shenandoah in these waters, and within the jurisdiction of this colony, for the purpose of entering into the service of a belligerent state, with which this country was not at war. He would further prove

that they were British-born subjects; that they were on board; that they were seen to get over the side of the vessel into a boat, come ashore, and that on reaching the shore they were apprehended, and further matters in the way of conversation that then took place between them and the police who apprehended them. That would be sufficient to satisfy the requirements of the statute. A case was decided in the exchequer chambers at home in which the law was fully gone into, and although that was for equipping a vessel for war, the same act applied. The case was known as the Alexandra case. The point submitted for the adjudication of that court did not arise directly in the present instance, but the principle did incidentally. He was then proceeding to call evidence, when—

Mr. Call asked whether it was proposed to make it a joint prosecution, and mentioned that in a superior court an indictment could not be filed against all together.

After some discussion, Mr. McDonnell elected to proceed first against Davidson, *alias* Charley. The others were then removed, and the following evidence called:

Richard Wardle, watch-house keeper, said that on the 14th instant the prisoner was brought to the lock-up in company with three others. He gave the name of James Davidson, and said he was a native of Scotland. (The witness then read the entry, which showed the witness was brought in at ten minutes past 10 o'clock at night; that he was a Protestant, and that he could read and write.)

John Williams deposed: I belong to the United States of America. I was taken from the bark De Godfrey, on which I was employed, by the Shenandoah, on the 7th of November, 1864. I entered on board the Shenandoah in the capacity of cook. (The witness was here asked as to the circumstances under which he joined the Shenandoah, but the bench ruled that it was unnecessary and also unadvisable to try and turn the proceedings into a sensational trial.) I arrived here on the 23d January. I know the prisoner; he gave his name as Charles. He came on board two days after we arrived. He was employed as assistant cook to the ward-room officers. When he came on board he had on the clothes he now wears. While on board he wore the confederate uniform. I had a conversation with him while he was on board. I asked him where he belonged to. He said London. I asked him what ship he came by, and he said the Great Britain. He said he would like to ship on board the Shenandoah, and while we were talking, Sailing-Master Bullock came into the galley where prisoner and I were. That was about a week after prisoner came on board. Mr. Bullock asked prisoner what he wanted in the ship. He told him that he came to join the ship. Mr. Bullock told him to keep out of sight while the visitors were on board.

To Mr. Call: At that time the prisoner had on the ship's uniform.

To Mr. McDonnell: When told to go out of sight, the prisoner went into the forecastle. Mr. Bullock told the master-at-arms to lock the forecastle-door, and to allow no visitors in. The prisoner at that time was in the forecastle. I left the vessel on the 5th February. The prisoner was on board then.

To Mr. Call: Prisoner at that time was cooking. When the visitors went ashore he came out, and in the morning when they began to arrive he went into the forecastle again. He was let out at night to get his hammock on the berth-deck. He slept next me. I cooked the "grub" for him, and sometimes took it to him myself. At meal-times the master-at-arms unlocked the door, passed the "grub" in, and then relocked the door.

John McDonnell: The prisoner got his uniform from Griffiths, a seaman. While on board the first lieutenant also spoke to the prisoner on several occasions. The
[122] *prisoner wore his uniform when Lieutenant Whittle spoke to him, and was in the galley cooking.

To Mr. Call: The lieutenant told him he dare not ship him while in port, but ordered him to keep out of sight, and said he would ship him when out of port.

Prisoner: Did I ever tell you my name?

Witness: Yes; you did.

Prisoner: When?

Witness: I called you Bill when in the galley, and you said, "My name is not Bill; it is Charley."

Prisoner: Think again. You are mistaken.

Witness: You asked me for a razor to shave with, and I gave you one.

To Mr. Call: It was on the second day when the prisoner asked for a razor. Before that he had full whiskers. (The prisoner appeared in court with simply a moustache and chin-tuft.) He said he wanted to disguise himself so that people would not know him. He then shaved himself as he now appears.

Walter J. Madden: I am a native of Boston. I was a seaman on board the bark De Godfrey. I was taken out of her on the 7th November, 1864, by the Shenandoah. I went from the De Godfrey and entered the Shenandoah as a seaman. After going on board I was rated as master of the hold. We arrived here on the 25th January.

To Mr. Call: This is the first port we touched at since I joined the Shenandoah.

To Mr. McDonnell: I know the prisoner. He first came on board a day or two after we arrived here. He worked in the galley, and he had on the ship's uniform. I had

some conversation with the prisoner. I asked him what he was doing on board, and he said he came to join her if he could. Visitors were on board while I was there, and the prisoner was in the forecastle while they were there. The forecastle was locked while he was there by the master-at-arms. He got his dinner in the forecastle at 12 o'clock. Dinner used to be passed in to him in the forecastle. It was passed in by the cook's mess-boy. I never saw Williams pass it in, but I have seen Quartermaster Wiggins do so.

To Mr. Call: It was passed in through the cable-hole, which was large enough for a man to get through. There was a door to that hole, which was not locked, although it could have been. It was kept shut.

To Mr. McDonnell: While visitors were on board the prisoner was locked up in the forecastle; after they left he used to come out in the evenings. We used to call him "Charley" on board. He slept in the fore-hatch and I slept aft. I left the vessel on the 6th; I think a week last Monday. When I left the vessel Charley was then on board. He usually wore the uniform "pants." He wore them all the time he was on board. I have seen him wear the uniform cap sometimes.

To Mr. Hacket: It was a gray cap, with two red and one white stripe round it.

To Mr. McDonnell: I have seen the petty officers speaking to him, and he then had on the uniform. One was chief boatswain's mate, and another the master-at-arms. I saw them speak to him every evening. I was not present when any order was given to the prisoner by the officers. His general work was cooking in the galley.

The prisoner said he did not wish to ask any questions.

Witness, (to Mr. Call:) There had been many workmen about the vessel, but none of them slept on board for the night. We had no hired labor for the galley. While the prisoner was in the forecastle, which was ordinarily used as a store-room, there were other persons there besides those who had come in with the ship. The prisoner is the man concerning whom I laid an information the other day. The muster was twice called over while we were in port, and while I was on board, by the chief lieutenant, at about 9 or 10 o'clock in the morning. Every one who was on the ship's articles was mustered. The boatswain sung out, "All hands to quarters." The men were mustered by their numbers at the guns. The carpenters and others were not called over; excepting for men at the guns, no roll was taken. The second lieutenant and the quartermaster went round to see after the others. On the first Sunday in every month all hands were mustered and the laws read out.

To Mr. Hackett: I do not belong to the ship now. I have come ashore, [laughter,] and am not going back.

Mr. McDonnell wished the witness to explain, but it was considered unnecessary.

Charles Bincker said: I am a native of Germany. I was taken from the bark Alina, on which I was a seaman, by the Shenandoah, on the 29th October. We were then at sea. I know the prisoner. I first saw him about twelve days ago, and five
[123] *or six days after we arrived. I left the vessel last Sunday. From the time when I first saw him, until I left, he continued to be on board. I heard him called Charley.

To Mr. Call: He was acting as cook in the galley.

To Mr. McDonnell: He wore gray clothes; the uniform of the vessel. He wore gray trousers and a gray cap with two red stripes and a white one in the center. I saw visitors come on board; while they were there Charley was in the forecastle. At dinner-time he was in the forecastle; he used to get his dinner there. He was locked up in the forecastle. He got his dinner from the mess-cook's boy. It was passed through the cable-hole. I have seen the master-at-arms unlock the door. When the visitors went away, the prisoner went into the galley and was cooking.

To Mr. Call: He got out sometimes through the hole and sometimes he was let out. I have never seen him come out or go in. I have seen the master-of-arms lock the door.

To Mr. McDonnell: He slept in a hammock on the berth-deck.

To Mr. Call: I never saw any of the officers talking to him while I was on board.

Herman Vecker, sworn: I am a native of Germany. I was on board the Alina with the last witness in October last, and was taken from her by the Shenandoah. I arrived here in the Shenandoah in January last. I know the prisoner. I saw him on board about seven or eight days after we arrived. I left the vessel last Sunday, and until I left I saw him continually on board. He was in the galley as cook. He wore the uniform. I have seen him in the forecastle in the day-time—after breakfast and during the dinner-hour. He used to have his breakfast in the forecastle. When visitors were on board he was in the forecastle. After they had gone I used to see him in the galley. He slept between decks in a hammock. I have spoken to him about the Shenandoah, and he told me he had joined her as cook. I have not heard the officers speak or give orders to him.

The prisoner said he did not wish to ask any questions.

Witness recalled: While I was on board I never saw any officer go into the forecastle to see who was there.

To Mr. Call: The master-at-arms was the officer in charge of the forecastle.

Alexander Minto, sworn: I am a senior constable of water-police stationed at Williamstown. I was in charge of the police-boat on the night of the 14th instant; shortly after 9 o'clock, at the patent slip on which the Shenandoah was, I saw a boat haul up to the gangway of the Shenandoah. One of the officers of the Shenandoah was standing at the gangway; he had his uniform on. I saw one of the boatmen, George Nicholls, go on board, and in a short time, a second or two, four men, James Davidson among them, came down to the boat. Another waterman, Clarke, remained in the boat. When I saw the four men go into the boat, I hauled alongside and spoke to them, Charley being present. I asked them who they were, and what they had been doing on board.

To Mr. Call: I think the officer at the gangway could have heard me.

To Mr. M'Donnell: They said they had been working at day-work on board. One of them had a bundle in his breast. I heard a call of "George" from the ship, which I took to be from the officer at the gangway, and immediately I saw Nicholls come and slide down into the boat. The boat then at once pulled ahead. I followed them, but lost sight of them on the water. I returned at once to the patent slip, and ran up to the railway-station, and saw two of them on the platform. I searched and found the two others in the water-closet. Charley was one of the two that were walking on the railway-platform. I went to them and asked them why they hurried away from the ship so quickly. They seemed to hesitate, and then said, "Oh! the Shenandoah you mean." I think it was Charley who said that. They asked what I wanted, and spoke of the train having just started, and I told them there was another. I asked them to accompany me, and they did so. On the way I spoke to all of them. Charley said he was sorry he had to leave her; that he had sold everything he had to join the ship. I asked him what ship he had been in last, and he said he came out from London in the Indemnity. I took them to Mr. Lyttleton, superintendent of police.

The prisoner asked the witness no questions.

Thomas H. Lyttleton, sworn: I am a superintendent of police. On the morning of the 14th I went on board the Shenandoah while she was on the patent slip. I saw Captain Waddell. I believe he is the captain of the vessel. I went on board to ask him to allow me to execute a warrant. (The witness was then asked as to his conversation with Captain Waddell, but the question was ruled to be inadmissible, although it was explained that the object was to prove the nationality. The bench said Mr. Lyttleton's own conclusions could be taken.) I saw a flag on board, which I believe to
[124] belong to the * Confederate States of America. I had with me the warrant produced, and I told him the purpose for which I went on board, but I was not allowed to effect it. I know the vessel to be commissioned by the Confederate States of America. The warrant was for the arrest of one Charley, but I was not allowed to execute it. I was a quarter of an hour on board. I am able to say she is a Confederate States vessel.

To Mr. Call: I had had a description of Charley, and saw him during that night. I recognized him, and had a conversation with him. He was brought to me by Senior Constable Minto, and I at once said, "I believe you are the very Charley I want." He laughed, and said it was a great joke on board about Charley being wanted. He said he was not the man. He said he was cooking for the ward-room mess, and I said I thought he looked like a cook. I sent him to the lock-up with two constables. He said he had been a few days on board, and that he picked up his meals from among the men. He expressed disappointment at not being able to go.

The prisoner asked the witness no questions.

Mr. M'Donnell stated that that was his case.

The court then adjourned for half an hour, and on resuming—

Mr. M'Donnell asked the bench to give their decision, as otherwise he should not be in a position to proceed with the other cases.

Mr. Call stated that the bench were prepared to give their decision, and then asked the prisoner the ordinary questions.

The prisoner said that he had never given the name of Charley. The statement was false altogether, and they had perjured themselves who said so.

Mr. Call, (addressing the prisoner:) The bench are of opinion that you have brought yourself within the act referred to, and have so served on board a vessel fitted out for warlike purposes. You are therefore committed to take your trial at the supreme court. Bail will be allowed, yourself in £50, and one surety in £50, or two in £25 each. He was then removed.

Franklin Glover was then placed in the dock.

Mr. M'Donnell said that there was no evidence against him, and that the case would therefore be withdrawn. He was an American.

The bench then ordered his discharge, and he was set at liberty.

William Mackenzie was then brought forward: When the information was read over to him, he stated that he had nothing to say.

John Williams was then recalled. He said: I first saw the prisoner on board on 29th

of January. He wore "citizen" clothes—no uniform at all. When visitors were on board he was in the forecastle; when they left, he was out on deck. I never saw any of the officers speaking to him. I never had any conversation with him, and he never spoke to me more than to ask when the ship was going away. I said, I did not know. I cooked the "grub" and sent it to the prisoner by the boy. I saw the forecastle-door unlocked after supper, when the visitors had gone ashore, by the master-at-arms. After it was unlocked I saw the prisoner come out on deck.

The prisoner said the forecastle-door was open all day.

Witness, (to the prisoner:) You had been on board for three days without regular rations, when I went to Mr. Grimball, the second lieutenant, and asked what was to be done with you and the others in the forecastle, when he gave me directions to the master-at-arms to get rations and supply them to you in the forecastle, the same as the others. I got cooked and supplied them to you in the forecastle.

To Mr. M'Donnell: The prisoner slept in the berth-deck.

The prisoner said he slept in the forecastle.

Witness, (to Mr. Call.) There were about twelve men in the forecastle who had come from the shore and wanted to join the ship. None of them arrived with the ship.

Walter J. Madden, recalled, deposed: About four or five days after I arrived in the Shenandoah I saw the prisoner on board. He was not engaged in anything. When I left on the 7th February he was then on board. He was in the forecastle, and his meals were carried in to him. When the visitors had gone he used to come out on deck in the evenings. He used to sleep in the berth-deck. He spoke to me with reference to joining the ship. He said he had not been long going to sea, and that he would like to join as ordinary seaman. He said he came on board to join the vessel. I did not hear any orders given by any of the officers to him.

To the prisoner: It was the night she broke adrift that you remarked to me you had not been long going to sea, and that you would like to join as ordinary seaman.

Charles Bincker, recalled, deposed. I first saw the prisoner on board the Shenandoah about five days after we arrived here. He holystoned the deck on Saturday last. He wore his own clothes, and was on board when I left the vessel on Sunday last.

[125] He slept in the berth-deck, and had his meals in the forecastle, the door at the time being locked. I have seen the master-at-arms open the door while the prisoner was there, as he always was when visitors were on board. I had no conversation with him. I do not know who ordered him to holystone the deck.

Herman Vecker, recalled, said: The prisoner came on board about five days after we arrived here. He worked on deck with the holystones. For the first four or five days he was in my mess between decks, but after that he received his meals in the forecastle, where he was when visitors came on board. I do not know who told him to go to work. I did not have any conversation with him. When he first came on board there were no locks on the doors, but afterwards when more men came there were two locks. I have seen the quartermaster unlock the door and hand meals in to the prisoner.

The prisoner asked this witness no questions.

Alexander Minto was then recalled, and deposed to the arrest of the prisoner, in much the same terms as in the previous case. The prisoner said he had lately been in the hospital, and that he had taken six trips in the City of Hobart. He also said, "I am sorry I cannot go in her now; I should like to have gone in her."

Richard Wardle, the watch-house keeper, was then recalled to prove the entry made on the night of the prisoner's arrest, from which it appeared he declared himself an Englishman.

Thomas H. Lyttleton, superintendent of police, repeated his former evidence.

That being the case for the Crown, the bench retired to consider their decision.

After a short absence they returned, and the prisoner was asked whether he had anything to say in his defense.

The prisoner said: All I can say is that I was not aware that I was breaking any law in going to join this vessel. I have been out of a ship for some time, and I thought I might as well try and get some employment as soon as possible.

Mr. Call: I do not think you are mending your case by making such statements.

Prisoner: I have nothing more to say.

Mr. Call, (to Mr. McDonnell:) The supreme court is now sitting: is it contemplated that the case shall now come on during these sittings?

Mr. McDonnell: It is not so intended.

Mr. Call: Then we might commit them to the general sessions, as it would save time and not keep them in custody so long.

Some discussion then ensued as to whether such a course was permitted, and upon reference it appeared that it was not.

The prisoner was then committed to take his trial at the supreme court, the same bail as in the other case being allowed. He was then removed.

Arthur Walmsley was then brought forward. When the information was read over to him, he denied that he went on board the Shenandoah for the purpose of joining her.

Mr. Superintendent Lyttleton deposed to having seen the prisoner on the night of the 14th instant; he said he had been on board a few days.

Prisoner: I said I had been on board only one day.

Witness, (to the bench:) I cannot recollect exactly what time he said.

Watch-house Keepor Wardell was recalled, and read the entry made when the prisoner was locked up, from which it appeared he described himself as an Englishman.

Charles Bincker recalled, deposed: I first saw the prisoner on board the Shenandoah after we arrived here. He was painting between decks on Saturday last. He took his meals with No. 2 mess. He was sometimes in the forecastle and sometimes on deck. He slept in the berth-deck. He was on board when I left the vessel. I had no conversation with him. He wore his own clothes.

Herman Vecker recalled, deposed: I first saw the prisoner on board on the 7th February; when I left the vessel on Sunday he was on board. He slept in the berth-deck, and had his meals with No. 2 mess. I have seen him do work on board. I asked him what he was doing on board the Shenandoah, and he said, "I will join as a seaman before the mast." At that time he had been two days on board.

Prisoner: Look here, sir; if I was going to die this very minute, I never spoke to that man there, and if Fox were here he would prove it. I went on board simply to see Fox, who came from the same town as I did.

Witness, (to the bench:) Fox is a quarter-gunner.

Senior Constable Minto then repeated his evidence. The prisoner when arrested said he had gone on board the day before to see a person who had come from the same town as himself.

That concluded the case.

[126] *Mr. Call asked the prisoner whether there were any witnesses that he could call, such as persons from Melbourne, who could say that he was on shore and not on board the ship.

The prisoner said that Captain Duncan Graham, of the Potomac lighter, could prove that he was living on board the lighter up to Tuesday morning. There were several other captains of lighters who could prove the same.

Mr. Call then directed the police to obtain the names and addresses of such persons and to insure their attendance.

The prisoner was then remanded until 11 o'clock on the following day, that the evidence might be produced.

The court then rose.

There was no meeting of the legislative assembly yesterday, owing to a quorum of members not being present.

The four men who were arrested in the attempt to escape from the Confederate States cruiser Shenandoah, on Tuesday night last, were brought up at the Williamstown police-court yesterday, charged with infringing the foreign-enlistment act by entering or agreeing to enlist themselves in the service of the Confederate States on board that vessel. The court was crowded during the whole day, and considerable interest was manifested in the proceedings. After some discussion it was resolved to take each case separately, and that of Davidson, alias Charley, to search for whom the warrant was issued, was first proceeded with. It was shown by several witnesses, who were until lately members of the crew of the Shenandoah, that the man was not seen on board until after the vessel arrived in these waters; that he was employed as cook except when visitors were on board, during which time he was locked up in the forecastle; that he had been told by the first lieutenant to keep out of sight until the vessel was out of the port, when he should be enlisted, and that he had spoken to the witnesses of his desire to join the vessel. He was committed for trial at the next criminal sessions, as was also Mackenzie, who, when called on to speak in his own defense, added evidence to that previously given against him. Glover, who when arrested declared himself an American, was discharged, it being stated there was no evidence against him. Walmsley, a boy of about seventeen years of age, and against whom the case is somewhat slight, stands remanded until to-day that he may call evidence to rebut some of the statements made by the witnesses for the prosecution.

The captain of the Shenandoah does not appear desirous of losing any time in taking his departure from this port. The crew were busily engaged during yesterday in taking in coal, and towards evening the sails were being uncovered. It is understood that the vessel will leave to-morrow.

No. 10.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *October* 25, 1865.

SIR: I have the honor to acknowledge the receipt of your letter of the 21st instant and its inclosures, respecting the Shenandoah, and I have to state to you that your representations shall be duly considered by Her Majesty's government.

I am, &c.,
(Signed) RUSSELL.

No. 11.

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *November* 3, 1865.

SIR: Her Majesty's government have duly considered your letter of the 18th of September, and, however unwilling I may be to prolong this discussion, I find it absolutely necessary to clear up some misconceptions as to the course and conduct of Great Britain during the recent contest in America.

I do not consider it incumbent upon me, however, to repeat or enlarge upon my arguments in reference to the alleged precipitate recognition of belligerent rights, or the contrast you draw between the conduct of Her Majesty's government in the late civil war and that of France during the American war of independence.

[127] *The existence of belligerent rights is, as Mr. Canning said, a question of fact rather than of opinion, and if the fact of a vast insurrection is developed suddenly, rapidly, and completely, the case must, I conceive, be treated by other nations in a different manner from the case of a rebellion breaking out partially, slowly, and gradually.

Nor, do I conceive, is it necessary to point out the difference between the conduct of France acknowledging the United States of America as an independent state, and forming treaties with the Government of that state within two years of the Declaration of Independence, and the patient neutrality of Great Britain, notwithstanding the interruption of her commerce and the immense losses suffered by her people during four years, and until victory had declared in favor of the Government against which the insurrection was directed.

I cannot forbear, however, to express some surprise at the apparent confidence you express that Her Majesty's government will acquiesce in a doctrine which the United States during more than thirty years declared to be opposed to the law and practice of nations, and that Her Majesty's government will grant reparation on grounds which, when urged by Portugal in a similar case, the United States positively, constantly, and solemnly rejected.

Thus, I find that in November, 1850, the Portuguese minister at Washington,[1] in an able summary of the Portuguese claims, after relating that upwards of sixty Portuguese vessels had been captured or

[1] The Portuguese minister at Washington to the United States Secretary of State, November 7, 1850.

plundered; that the fitting out at Baltimore of the privateers which effected their capture was notorious, and that many leading citizens of Baltimore, including the sheriff and postmaster, were summoned before the courts as interested in those privateers, adds, "The undersigned begs leave to say, and he submits that it was the duty of the United States Government to exercise a reasonable degree of diligence to prevent these proceedings of its citizens, and that, having failed to do so, a just claim exists on the part of the government of Portugal, in behalf of its despoiled subjects, against the United States for the amount of the losses sustained by reason thereof."

But did the United States admit the claim thus courteously preferred? I cannot find that even any reply was returned to the Portuguese minister.

Probably the United States Government relied on the answers which, from 1816 to 1822, and from 1822 to 1828, had been given to the ministers of Portugal.

These answers were, in substance, that prosecutions would be instituted if evidence were forthcoming. Thus, in reply to a letter of the Portuguese minister of December 11, 1818, respecting John Daniels, the supposed commander of a privateer, Mr. John Quincy Adams says:[1]

> The attorney of the United States for the district of Maryland, under instructions from this Department, will commence a prosecution against him, *if evidence shall appear sufficient for convicting him of having violated the laws of the United States, by outrages committed upon any of the subjects of Portugal.*
>
> I have the honor of giving you this notice in reference to your letter above mentioned, and of requesting you to give directions that any testimony which may be material for the commencement of a prosecution, and which it may be in your power to indicate, may be made known to Elias Glenn, the district attorney of the United States at Baltimore, who is directed to prosecute conformably to the laws any person *against whom the evidence obtainable shall be sufficient to warrant his conviction.*

Exactly similar to this conduct on the part of your Government has been the conduct of Her Majesty's government in the late war. In the case of the Alabama, I asked for evidence sufficient to obtain a verdict, and as I could not myself judge of the sufficiency of the evidence you tendered, I referred the question to the law-officers of the Crown.

If it is asserted that I did not use reasonable diligence, or that the late and the present attorney-general were either ignorant of the law, or purposely misstated it, I can only respectfully but decidedly repel any such charge, both for myself and for the law-officers of the Crown.

Yet, although our conduct has been precisely similar to that of your own Government to Portugal, you now draw an alarming picture of the consequences which may arise from such conduct. "For," you say, "if it be once fairly established as a principle of the international code, that a neutral power is the sole judge of the degree to which it has done its duty, under a code of its own making, for the prevention of gross and flagrant outrages, initiated in its own ports by the agents of one belligerent in co-operation with numbers of its own subjects, and perpetrated upon the commerce of the other on the high seas; if it be conceded that the neutral, upon reclamation made for the injuries thus done by reason of the manifest inefficacy of its means of repression,
[128] which it has at all times the *power to improve at will, can deliberately decline to respond to any such appeal, fall back upon the little that it has attempted as an excuse, and thenceforward claim, with justice, to be released from the inevitable consequences that must

[1] The United States Secretary of State to the Portuguese minister at Washington, April 22, 1819.

ensue from its inaction, then it must surely follow that the only competition between neutral powers hereafter will be, not which shall do the most, but which shall do the least to fulfill its obligations of interdiction of the industry and enterprise of its people in promoting the conflicts that take place between belligerents on the ocean."

Yet, as far as I can judge, your Secretaries of State always maintained that the United States as a neutral power were "the sole judges of the degree in which it had done its duty under a code of its own making."

But now as to the code. I fully admit that the laws of Congress of 1817 and 1818 differ from the act of 1794. The chief difference appears to me to lie in the provision that, besides princes and states specified in the act of 1794, the act of 1818 extends to "colony, district, or people."

But so does, in other words, our act of 1819. There are other differences, however, and to these I suppose you allude.

But, for the reasons which I proceed to state, these other differences (of which I did not lose sight while stating in my former letter that the main provisions of the act of Congress of 1818 had been adopted in our legislation of 1819, so far as they were considered applicable to the circumstances of this country,) have never appeared to Her Majesty's government to be of any very material importance.

The tenth section of the act of Congress of April 20, 1818, requires bonds to be given "by the owners or consignees of *every armed ship or vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof,*" in double the value of the ship and cargo, against the employment of such ship or vessel, "by such owners," to cruise or commit hostilities against the subjects, &c., of any province or state with whom the United States are at peace.

The eleventh section of the act of Congress of April 20, 1818, is in these words: "And be it further enacted, that the collectors of the customs be, and they are hereby respectively authorized and required, to detain any vessel *manifestly built for warlike purposes, and about to depart the United States, of which the cargo shall principally consist of arms and munitions of war*, when the number of men shipped on board, or other circumstances, shall render it probable that such vessel is intended to be employed by the owner or owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, until the decision of the President be had thereon, or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding section of this act."

Now I contend, first, that for ten years these provisions proved utterly inefficacious to prevent the fitting out of privateers at Baltimore, as shown by the fact that the complaints of the Portuguese ministers of captures and plundering by American privateers were more frequent, and extended to a larger amount of property after 1818, than they had done from 1816 to 1818.

But, secondly, I observe that the tenth section applies only to vessels which are already armed before they sail out of the ports of the United States, and which belong (wholly or in part) to United States citizens; and the security taken under this section is only against their employment "by such owners" to cruise, &c., leaving those owners at liberty, without forfeiting their bonds, to transfer the vessels to others, who might afterwards so employ them. The eleventh section applies only to vessels "manifestly built for warlike purposes," and "of which the

cargo shall principally consist of arms and munitions of war," and I think it is quite clear that had we so amended our law, and had it been found applicable in any cases, the owners of the vessels might easily have given the bonds required, and might as easily have sent their vessels to sea, forfeiting or not forfeiting, as the event might have turned out, the amount of their bonds. The great armies equipped and fed by the confederates; their vast magazines; the money advanced for the Birkenhead rams, show conclusively that, if Her Majesty's government had relied on such provisions as the tenth and eleventh sections of the act of Congress, many vessels, probably including the rams at Birkenhead, would have escaped and have been employed in breaking the blockade of Charleston and other southern ports. Be that as it may, however, these provisions of the act of Congress clearly would not be applicable to the Alabama, Florida, Georgia, Shenandoah, and vessels of that class; none of which, when they left this country, were either "armed ships or vessels," or had on board any cargo, consisting "principally" (if at all) "of arms and munitions of war;" neither would they have been applicable to the ships which carried out arms, &c., to those
[129] vessels, *but which were themselves neither armed nor "intended to be employed by the owner or owners to cruise or commit hostilities." If, therefore, such provisions had been contained in the British statute, they would have proved simply nugatory, and would have added nothing, in any of the cases which have actually happened, to the powers of prevention given by the act as it stands.

In that case, what would have been our position? We should have been reproached more than ever in America for the insincerity of our proceeding, and our inactivity in executing our own law. Results would have been appealed to, as you appeal to them in the letter to which I am now giving an answer.

In the case of "the Birkenhead rams," we had first the evidence, in their construction itself, that they were built for warlike purposes; next a copy of the contract by which Mr. Bullock, the confederate agent, agreed to sell these vessels to Mr. Bravay; next the proof that their Egyptian names, &c., were only a fiction, the Viceroy of Egypt having positively refused to buy them. Those and other circumstances amounted to a presumptive proof that those formidable vessels were intended for the purpose of making war on the United States. You are already aware of the conduct of the government when they had, as in this instance, a case upon which they could proceed.

On the other side, take the case of the Sea King. She was a merchant-ship, unarmed, which went from the Thames to a foreign port. Our foreign-enlistment act, like yours, requires two things to be proved: First, that the vessel is fitted out, armed, or equipped for warlike purposes. But, secondly, it is not enough to prove that the vessel is fitted out, armed, or equipped for purposes of war. The warlike intent must be directed against some prince or state in friendly relations with the Crown of Great Britain. Now, on neither of these points did you furnish us, nor did we possess, a tittle of evidence against the Sea King. Yet you hold us responsible for all the depredations she may have committed on the high seas!

It must not be forgotten that in a free country the Crown cannot act upon mere vague suspicion, without some evidence to submit to a jury; and that trial by jury affords to British subjects the same protection which, in an ordinary state of peace, American citizens enjoy in your own country.

Her Majesty's government desire to be on the most friendly terms

with the United States, but are not prepared to accede to any demand which aims at the diminution of our freedom, or which assumes, without warrant from any previously recognized authority or practice, the existence of an extent of obligation on the part of neutrals toward belligerents, going beyond any which the government of a free country could have power, though acting with entire good faith, punctually to fulfill.

Yet it appears to me, I confess, that as neither the law of the United States nor our own foreign-enlistment act have proved upon trial completely efficacious, it is worth consideration whether improvements may not be made in the statutes of both nations, so that, for the future, each government may have in its own territory as much security as our free institutions will permit against those who act in defience of the intention of the sovereign and evade the letter of its laws.

I have the honor to inclose a memorandum in regard to our own conduct during the American war in reference to a passage in your letter, (Inclosure No. 1,) and a second memorandum showing in what manner your various complaints during the recent civil war have been disposed of, (Inclosure No. 2.)

I have, in conclusion, only to repeat, in this the last letter which I shall have the honor to address to you on this subject, my sincere and earnest hopes that our two countries, now both relieved from the stain and the guilt of slavery, may perform their part in the world in peace and good will.

I am, &c.,
(Signed) RUSSELL.

[Inclosure 1 in No. 11.]

Memorandum relative to the measures of coercion adopted by Great Britain during her contest with the North American Colonies; and also regarding the policy of foreign powers.

[*Extract from letter from Mr. Adams to Earl Russell of September* 18, 1865.]

"In respect to this, may I be permitted to beg your attention to the fact that, with perhaps the exception of the gross number of the people engaged, I do think myself able to furnish an example of an insurrection in every particular corresponding to your description, which has occurred within the last century? I do not doubt that my allusion will be at once understood by your lordship without another word.

[130] *"Yet, notwithstanding all the points of identity in that case, I cannot find that Her Majesty's government was met at the outset in 1774, with any announcement, by a foreign power in amity with Great Britain, of a necessity immediately to recognize the insurgents as a belligerent power, because of the magnitude of the struggle, or for any other cause. Neither is there the smallest ground for believing that it would have tolerated the proceeding for one moment, if it had been.

"Her Majesty's government at once resorted without scruple or hesitation to every right ordinarily exercised by a belligerent in a war with a strong power, and was met with a degree of resistance more effective and enduring than any manifested in the late struggle. That resistance, too, was carried out on the ocean, where alone the interests of distant neutral states are liable to be seriously affected by the domestic strife of any nation, in a manner far more extensive than the late insurgents by their unaided efforts ever could have attempted. Yet a length of time elapsed before any foreign power, however much inclined, ventured to find in this state of things any reason for considering the people waging such a war as a belligerent power. It furthermore is certain, that if at any time the smallest indication of a leaning that way manifested itself in any of the commercial powers, it was immediately noted by the British government for remonstrance and reclamation.

"Your lordship has been pleased to review the conduct of France in this emergency: and to endeavor to set aside the parallel which I attempted in my note, on the ground that that country was animated by a policy decidedly hostile to Great Britain. The fact is doubtless so. But it so happens that this only bears with the more force in my

favor on the present argument. Had France, being inclined to injure Great Britain, decided to recognize the insurgents as a belligerent, it would, according to the doctrine now avowed by Her Majesty's government, have been doing no more than was absolutely necessary and altogether justifiable. Why did it not take this step at once? Unhappily for the example, Great Britain at the outset insisted upon considering her as a friendly power, and called upon her solemnly to desist from any attempt whatever to recognize the presence of the insurgent force. In proof of this, I beg permission to quote a brief extract from an historical writer well known to have drawn his statements from official sources. Mr. Adolphus says, that in April, 1775, that is one year after the outbreak of the insurrection, 'the friendly disposition of the French government toward Great Britain has been unequivocally demonstrated; and the expectation that succor would be afforded to the Americans was suppressed by an edict prohibiting all intercourse with them.'

"It thus appears that no idea was, at that early period, entertained by the British authorities of any unfriendly disposition on the part of France. So far from being inclined, as your lordship supposes it might have been, to give aid to the insurrection, which since 1774 had been developing its great proportions, by any recognition of it as a belligerent, the French sovereign frankly responded to an appeal made by Great Britain, by interdicting his people from all relations whatever with the Americans. In other words, the example shows that, on both sides, there was not the remotest conception that a recognition of insurgents as a belligerent, immediately upon the breaking out of the insurrection, could be considered as a justifiable act on the part of a friendly power."

In March, 1774, news arrived in England of the destruction, on the 18th December, 1773, of the tea contained in the ships lying in Boston harbor. This intelligence occasioned a message from the Throne to both Houses of Parliament, in which they were informed that in consequence of the unwarrantable practices carried on in North America, and particularly of the violent and outrageous proceedings at the town and port of Boston, with a view of obstructing the commerce of this kingdom, and upon grounds and pretenses immediately subversive of its constitution, it was thought fit to lay the whole matter before Parliament, fully confiding, as well in their zeal for the maintenance of His Majesty's authority as in their attachment to the common interest and welfare of all his dominions, that they would not only enable him effectually to take such *measures* as might most likely put an immediate stop to those disorders, but would also take into their most serious consideration what further regulations and permanent provisions might be necessary to establish, for better securing the execution of the laws, and the just dependence of the colonies upon the Crown and Parliament of Great Britain. March 7, 1774.

The first measure of coercion adopted by the government was by the authority of an act of Parliament, which received the royal assent on the 31st of March, 1774. By this act the government was empowered to withdraw from the town and port of Boston all officers concerned in the collection of customs, "and to discontinue the landing and discharging, lading and shipping of goods, wares, and merchandise, at the said town of Boston, or within the harbor thereof." 14 Geo. II, cap. 19.

This measure was shortly followed by the passing of a further act (11th May, 1774,) "for the better regulating the government in the province of Massachusetts Bay." The intention of the act was to alter the constitution of that province as it stood upon the charter of King William; to take the whole executive power out of the hands of the Democratic party, and to vest the nomination of counselors, judges, and magistrates, of all kinds, including sheriffs, in the Crown, and in some cases in the King's governor, and all to be removable at the pleasure of the Crown. 14 Geo. III, cap. 45.

On the 6th of May, 1774, "a bill for the impartial administration of justice in the cases of persons questioned for any acts done by them in the execution of the laws, or for the suppression of riots and tumults in the province of Massachusetts Bay, in New England," passed the House of Commons. 14 Geo. III, cap. 39.

The first of these acts regarding trade with the town and harbor of Boston, virtually prohibited trade with that port, one of the clauses enacting—

"That if any ship or vessel shall be moored or lie at anchor, or be seen hovering within the bay, or within one league from the said bay, it shall and may be lawful [131] for any *admiral, chief, commander, &c., of His Majesty's fleet or ships of war, or for any officer of His Majesty's customs, to *compel such ship or vessel to depart to some other port, or to such station as the officer shall appoint, and to use such force for that purpose as shall be found necessary; and if such* ship or vessel shall not depart within six hours after notice for that purpose given, such ship or vessel, with all the goods laden on board, and all the guns, tackle, and furniture, shall be forfeited, whether bulk shall have been broken or not."

Contrary to the expectations of the British government these measures tended only to the adoption of a determined and united feeling of resistance on the part of the colonists. On the 13th May, 1774, General Gage arrived at Boston to administer the province of Massachusetts Bay. On the arrival of the Boston port bill public meetings were held in the various colonies, which subsequently led to an agreement being framed by the committee of correspondence at Boston, entitled a solemn league and covenant, wherein the subscribers bound themselves in the most solemn manner, and in the presence of God, to suspend all commercial intercourse with Great Britain from the last day of the ensuing month of August, until the Boston port bill and the other late obnoxious laws were repealed, and the colony of Massachusetts Bay fully restored to its chartered rights. This agreement led to the issue of a proclamation by General Gage, in which it was styled an "unlawful, hostile, and traitorous combination, contrary to the allegiance due to the King," &c.

Measures were also adopted by the colonists for holding a general congress at Philadelphia, which was opened on the 5th September, 1774, the first public act of which was a declaratory resolution expressive of their disposition with respect to the colony of Massachusetts Bay, and immediately intended to confirm and encourage that people, and to approve of the wisdom and fortitude with which their opposition to the measures adopted by government had hitherto been conducted.

On the 30th November, 1774, a new Parliament met in Great Britain, and in the speech from the Throne the two Houses were informed that a most daring spirit of resistance and disobedience to the law still existed in the province of Massachusetts Bay, and had in divers parts of it broke forth in fresh violences of a very criminal nature, that these proceedings had been countenanced and encouraged in others of the colonies, and unwarrantable attempts made to obstruct the commerce of this kingdom.

On the 9th February, 1775, a humble address was presented to the King by Parliament, in reply to the royal speech.

In this address the Parliament stated that "we have taken them [the papers relating to American affairs] into our most serious consideration, and we find that a part of your Majesty's subjects in the province of Massachusetts Bay have proceeded so far as to resist the authority of the supreme legislature; that a *rebellion* at the time actually existed within the said province; and that they saw, with the utmost concern, that they had been countenanced and encouraged by unlawful combinations and engagements entered into by His Majesty's subjects in several of the other colonies. * * We can never," continued the address, "so far desert the trust reposed in us as to relinquish any part of the sovereign authority over all your Majesty's dominions which by law is vested in your Majesty and the two Houses of Parliament; and the conduct of many persons in several of the colonies, during the late disturbances, is alone sufficient to convince us how necessary this power is for the protection of the lives and fortunes of your Majesty's subjects. * * * * At the same time we consider it as our indispensable duty humbly to beseech your Majesty that you will take the most effectual measures to enforce due obedience to the laws and authority of the supreme legislature; and we beg leave, in the most solemn manner, to assure your Majesty that it is our fixed resolution, at the hazard of our lives and properties, to stand by your Majesty against all rebellious attempts in the maintenance of the just rights of your Majesty and the two Houses of Parliament.

In consequence of this address, military preparations were made to coerce the colonists; and on the 10th February, 1775, a bill was also introduced into Parliament, and, after a long debate, received the royal assent, on the 30th March, 1775 (15 Geo. III, cap. 10.) The title of the act was, "An act to restrain the trade and commerce of the provinces of Massachusetts Bay and New Hampshire, and colonies of Connecticut, &c., in North America, to Great Britain, Ireland, and the British islands in the West Indies, &c."

The minister, in proposing the bill, stated that he supported it on the grounds that, as the Americans had refused to trade with Great Britain, *it was but just that Great Britain should not suffer them to trade with any other nation.* By a further act these restrictions were extended to several other colonies in North America, which had been omitted in the first act.

15 Geo. III, cap. 18.

[132] By the terms of this act, all vessels trading with the colonies were to be furnished with certificates, without which they were liable to seizure by British ships of war and officers of the customs.

On the 20th May, 1775, articles of confederation and perpetual union were entered into by the delegates of the several colonies of New Hampshire, Massachusetts, &c. A resolution was at the same time passed, that after the expiration of six months (from the 20th July, 1775) all the ports of the said colonies were declared to be thenceforth open to the ships of every state in Europe that would admit and protect the commerce of the colonies.[1]

[1] The trade of the British colonists, at this period, was carried on solely by British and colonial shipping.

Although by the above articles the colonists usurped the rights of sovereignty with regard to peace and war, the entering into alliances, the appointment of civil and military officers, &c., still their connection with Great Britain was maintained, and no *de facto* independent government was established.

On the 12th June, 1775, General Gage issued a proclamation, by which a pardon was offered in the King's name to all those who should forthwith lay down their arms, threatening the treatment of *rebels* and traitors to all those who did not accept the proffered pardon. This proclamation was looked upon as the preliminary to immediate action, and on the 17th June hostilities commenced between the colonists and royal troops in the neighborhood of Charlestown.

In July, 1775, the confederacy assumed the appellation of the *Thirteen United Colonies*, and General Washington was appointed to the command of the army of the confederation. Hostilities were carried on, not only in the colonies, but Canada was also invaded by the colonial forces.

The first act of the Congress for the formation of a navy was promulgated on the 13th October, 1775, when two vessels were ordered to be armed, and on the 30th of the same month two more armed vessels were ordered to be fitted for sea. On the 25th November, 1775, resolutions were passed, directing seizures and capture under commissions obtained from the Congress, together with the condemnation of British vessels *employed in a hostile manner* against the colonies; the mode of trial and of condemnation was pointed out, and the shares of the prizes were apportioned. On the 28th November, 1775, Congress adopted rules for the regulation of the navy of the *United Colonies*. On the 13th December, a report was sanctioned for fitting out a naval armament, to consist in the whole of thirteen ships. On the 22d December, officers were appointed to command the armed vessels.

On the 6th January, 1776, a regulation was adopted relative to the division of prizes and prize-money taken by armed vessels.

On the 23d March, 1776, resolutions were adopted authorizing the fitting out of *private armed vessels*, to cruise against the enemies of the *United Colonies*.

On the 2d April, 1776, the form of a commission for private armed vessels was agreed upon, and on the 3d April instructions to the commanders of private armed vessels were considered and adopted. *They authorized the capture of all ships and other vessels belonging to the inhabitants of Great Britain* on the high seas, or between high-water and low-water marks, except vessels bringing persons who intended to reside and settle in the United Colonies.

The whole of these laws were promulgated previously to the final Declaration of Independence issued on the 4th July, 1776.

In the mean time the different powers of Europe, notwithstanding their declarations of neutrality in the conflict between Great Britain and her colonies, more particularly France, Spain, and Holland, almost openly expressed their sympathy with the cause of the colonists, and aided them with arms and money, and allowed the fitting out of ships, the repairs and armaments, of privateers in their ports, even previously to the receipt of the Declaration of Independence of the colonies, signed on the 4th July, 1776; the letter from the American committee of secret correspondence to Mr. Silas Deane, their agent in Paris, inclosing the *Declaration of Independency*, with instructions to make it known to the powers of Europe, not being received until the 7th of November, 1776.

In March, 1776, Mr. S. Deane had been sent to France by the committee of secret correspondence of America[1] with instructions to communicate, in the character [133] of a merchant, *with M. de Vergennes, the French minister for foreign affairs, and to procure through the assistance of that government a supply of clothing and arms for 25,000 men. Mr. Deane was provided with letters of introduction addressed to various French subjects interested in the success of the colonists. Already, previously to the arrival of Mr. Deane, the French minister for foreign affairs had obtained authority from the King to furnish "un million de livres pour le service des colonies Anglaises." A M. de Beaumarchais was secretly charged with the disposal of this money for the benefit of the colonies.

Lettre du Comte de Vergennes a Louis XVI, du 2 e mai, 1776.

The following particulars regarding the movements of the American ships of war subsequently to the Declaration of Independence of the colonies have been obtained principally from the "History of the United States Navy," by Fenimore Cooper, the authenticity of which are, however, sufficiently borne out on reference to the official correspondence of that period:

The Reprisal was the first American man-of-war that ever showed herself in Europe.

[1] This committee was established by the colonists on the 29th November, 1775, to correspond with the friends of America in other countries. The committee was denominated the "*Committee of Secret Correspondence*," and continued in operation till April 17, 1777, when the name was changed to that of the "Committee of Foreign Affairs." On the appointment of a secretary of foreign affairs, on the 10th of August, 1781, the committee was dissolved, and the foreign correspondence from that time went into the hands of the secretary.

She quitted America not long after the Declaration of Independence, and appeared in France in the autumn of 1776, bringing in with her *several English prizes*. A few privateers had preceded her, and slight difficulties had occurred in relation to some of their prizes[1] that had gone into Spain; but it is believed that these were the first English captured ships that had entered France since the commencement of the American Revolution. The English embassador complained of this infraction of the treaty between the two countries, but means were found to dispose of the prizes without detection. The Reprisal having refitted, soon sailed toward the Bay of Biscay on another cruise. Here she took several English vessels, and among the rest a king's packet that plied between Falmouth and Lisbon. When the cruise was terminated, Captain Wickes went into Nantes, taking his prizes with him. This proceeding caused further representations to be made by the British embassador, which resulted in the prizes being ordered to quit France. The Reprisal, however, was allowed to remain, in consequence of her leaky state. The prizes were taken into the offing and sold to French purchasers.

In April, 1777, the Lexington arrived, and the old difficulties were renewed. The American commissioners in Paris, who had been authorized by their Government to equip vessels, appoint officers, and do other matters to annoy the enemy, now planned a cruise that surpassed anything of the sort that had yet been done in Europe under the American flag. Captain Wickes was directed to proceed to sea with his own vessel (the Reprisal) and the Lexington, and to go directly off Ireland, in order to intercept a convoy of linen-ships that was expected to sail about that time. The Dolphin, a cutter which had been purchased and fitted out in France, was also directed to join the squadron.

Captain Wickes quitted Nantes about the commencement of June, 1777, and sailed round the coast of Ireland, capturing and destroying many ships, and afterward returned to France.

The boldness and success of this cruise produced much sensation in England, and the French government was driven to the necessity of either entirely throwing aside the mask, or of taking some more decided step in relation to these cruisers. Not being prepared for war, it resorted to the latter expedient. The Reprisal and Lexington were ordered to be seized and held until security was given that they would quit the European seas, while the prizes were ordered to quit France without delay. The latter were accordingly taken outside the port and disposed of to French merchants in the same informal manner as in the previous cases, and the vessels of war prepared to return to America.

While the American commissioners (Dr. Franklin and Silas Deane) were directing the movements of Captain Wickes in the manner that has been described, they were not idle in other quarters. A small frigate was building at Nantes on their account, and an agent was sent by them to Dover, where he purchased a fast-sailing, English-built cutter, and had her carried across to Dunkirk. Here she was privately equipped as a cruiser, and named the Surprise, and Captain G. Conyngham was appointed to command her, by filling up a blank commission from John Hancock, the President of the Congress. This commission was dated March 1, 1777. Having obtained his officers and crew in Dunkirk, Captain Conyngham sailed on a cruise about the 1st May, and on the 7th he captured the Harwich packet Prince of Orange, with which he returned to Dunkirk.

This proceeding of the Surprise called forth the earnest remonstrance of the English embassador, and Captain Conyngham and his crew were imprisoned, the cutter seized, and the prizes liberated. The commission of Captain Conyngham was taken from him and sent to Versailles.

[134] "Notwithstanding these proceedings the American commissioners purchased and fitted out another cutter at Dunkirk, which was called the Revenge, and means were found to liberate Captain Conyngham and his people, to whom a new commission was given, doubtless one of those in blank which had been confided to the commissioners to fill at their discretion.

The Revenge, under the command of Captain Conyngham, sailed from Dunkirk on the 18th July, 1777, and captured many British vessels, some of which were destroyed, but the most valuable were sent to Spain.

After a cruise of almost unprecedented success as far as injury to British merchants was concerned, the Revenge went into Ferrol, refitted, and finally sailed for the American seas.

The characters of the Surprise and Revenge, says Fenimore Cooper, appear never to have been properly understood. In all the accounts of the day, these vessels were spoken of as being privateers authorized to act by the commissioners in Paris. That the two vessels commanded by Captain Conyngham were public vessels, however, is proved in a variety of ways. Like the Dolphin, the Surprise and Revenge were bought and equipped by agents of the diplomatic commissioners of the United States.

The sensation produced among British merchants by the different cruises in the Eu-

[1] See reference to policy of Spain, page 135.

topean seas was very great; Mr. Deane,[1] one of the American agents in Paris, stating that it had caused insurance to rise, and even deterred British merchants from shipping goods in English bottoms, so that in a few weeks *forty sail of French ships* were loading in the Thames on freight. Mr. Deane to Mr. Morris; Paris, August 23, 1777.

Insurances in some instances rose as high as 25 per cent., and for a short period 10 per cent. was asked between Dover and Calais.

In 1776 the American commissioners in Paris, with a view to increase the naval force of the country, caused a frigate of extraordinary size, and of peculiar armament and construction for that period, to be laid down at Amsterdam. This ship had the keel and sides of a two-decker, though frigate-built, and her main-deck armament was intended to consist of 32-pounders. She was named the Indian. In consequence, however, of the apprehension of the Dutch government, and the jealousy of that of England, the American Congress was induced to make an offering of the Indian to Louis XVI, and she was equipped and got ready for sea as a French vessel of war.

This vessel subsequently entered the American service under the following circumstances, and was finally captured after having destroyed a large amount of British shipping.

The following are the circumstances related by Cooper: In 1779 Commodore Gillon was sent to Europe by the State of Carolina, provided with large amounts of colonial produce, for the purpose of raising funds to purchase ships of war for the American Navy. Commodore Gillon, after many unsuccessful attempts to obtain the class of ships he required, finally went to Amsterdam, where he found the Indian, which vessel, as previously mentioned, had been laid down by the American commissioners, and subsequently presented to France. She had the dimensions of a small seventy-four, but was a frigate in construction, carrying an armament of twenty-eight thirty-sixes on her gun-deck. This ship, though strictly the property of France, had been lent by Louis XVI to the Duke of Luxemburg, who hired her to the State of South Carolina for three years on condition that the State would insure her, sail her at its own expense, and render to her owner one-fourth of the proceeds of her prizes. Under this singular compact the ship, which was named the South Carolina for the occasion, got out of Amsterdam in 1781, and made a successful cruise in the Narrow Seas, sending her prizes into Spain. She afterward sailed for America, capturing ten sail, with which she went into the Havana.

Cooper states that most of the vessels of South Carolina were purchased, and its seamen were principally obtained, from places out of its limits; Commodore Gillon and Captain Joyner being both natives of Holland.

Having thus given an outline of the proceedings of the American vessels of war in Europe, it will be interesting to refer to the diplomatic correspondence, and also to that of the American commissioners in Paris.

On the 18th of August, 1776, Mr. Silas Deane, who, as before stated, had been sent to Paris as the agent of the revolted colonies, and who had arrived in that city about the beginning of July, reported the result of his secret interviews with the French minister for foreign affairs. M. de Vergennes assured Mr. Deane that the importance of American commerce was well known, [135] and that no country could so well supply the colonies, and *receive their produce, as France; for which reason the court had ordered their ports to be kept open and equally free to America as to Britain. With regard to the shipment of arms, M. de Vergennes stated that, considering the good understanding between the two courts of Versailles and London, they could not *openly* encourage the shipment of warlike stores, but no obstruction of any kind would be given; if there should, as the custom-houses were not fully in their secrets in the matter, such obstructions would be removed on the first application. Mr. S. Deane; Paris, August 18, 1776.

So satisfied was Mr. Deane with the result of his intercourse with the French minister that he stated that he had hopes of obtaining liberty for the armed vessels of the United Colonies to dispose of their prizes in the ports of France, and also for the arming and fitting out of vessels of war from thence. He further urged that a few American cruisers should be sent to the French coast, where they would do very well, as they would find protection in the harbors of the kingdom. Coming ostensibly for the purpose of commerce, he stated, no questions would be asked, and they might wait until opportunity offered and then strike something to the purpose.

On the 8th October, 1776, Mr. Dean stated that the French court, as well as other courts in Europe, had expected that the Declaration of Independence would be formally communicated to them. He also urged the necessity of eight or ten American frigates being collected at Bordeaux, where they might have leisure to refit and procure supplies. The appearance of American cruisers in Europe had, he stated, amazed the British merchants, and that insurance would now be on the war establishment; and as the American vessels of war would be protected in the ports of France and

[1] This letter contains an interesting report on the proceedings of the American cruisers and privateers in France and Spain since their first arrival in the European seas.

Spain, the whole of the British commerce would be exposed. He also prayed that the committee would forward him *blank commissions*, or a power to grant commissions to ships of war, as there were many persons wishing for an opportunity for using them in this way. Mr. Deane made frequent applications for *blank commissions*, which were subsequently forwarded to the American ministers in Paris in December, 1776.

The first country which appears to have publicly acknowledged the vessels of the United States as being entitled to belligerent rights was Spain, under the following circumstances:

In September, 1776, Captain Lee, commanding the American vessel Hawke, who on his passage from America had captured some valuable British vessels, went into Bilbao, not with the prizes, but with the captains and crews of the captured vessels. The British consul at Bilbao and the captains of the vessels protested, and complained against Captain Lee as a pirate, on which his vessel was detained, and his commission, &c., sent to Madrid by the Spanish authorities.

On the 7th of October, 1775, the Spanish government directed the governor of Bilbao to release the Hawke, and declared "that in consequence of the amity subsisting between His Catholic Majesty and the King of Great Britain, he should maintain a perfect neutrality during the war; that he should not give any aid to the colonists; *but should not deny their being admitted into any ports of his dominions, while they conformed to the laws of the country.*"

On the 26th of September, 1776, commissioners were appointed by the American Congress for transacting the business of the United States at the court of France. The persons chosen were Benjamin Franklin, Silas Deane, and Thomas Jefferson; the latter was subsequently replaced by Arthur Lee. The three commissioners met in Paris about the middle of December, where they continued to reside, chiefly employed in procuring military supplies and money for the United States, till they signed the treaty of alliance with France on the 6th February, 1778. They were presented to the King, as representatives of an independent state, on the 20th March, 1778. Dr. Franklin was appointed minister plenipotentiary to the court of France on the 14th September, 1778, at which time the commission was dissolved.

In a letter addressed by the committee to the commissioners on the 21st September, 1776, they were informed that a resolution had been passed by Congress, *approving of armed vessels being fitted out by them on continental account, provided the court of France disliked not the measure; and they were informed that blank commissions for this purpose would be sent to them by the next opportunity.*

The commissioners arrived in Paris on the 22d of December, 1776, and on the 28th they were received by M. de Vergennes, the French minister for foreign affairs. They laid before him their commissions, with the articles of a proposed treaty of commerce. In their letter to the committee reporting their reception, they also stated *that the ports of France, Spain, and Florence (that is, Leghorn in the Mediterranean) were open to the American cruisers upon the usual terms of neutrality.*

Commissioners to Paris, January 17, 1777.

In March, 1777, the commissioners reported that the French court, while treat- [136] ing them "privately with all civility, was cautious of giving umbrage to England, and was therefore desirous of avoiding an open reception and acknowledgment of them, or entering into any formal negotiation with them, as ministers from the Congress. To make them easy, however, they were told that the ports of France were open to their ships as friends. Although it was no secret at the time that 200 field-pieces of brass, and 30,000 fusils, with other munitions of war in great abundance, had been taken out of the King's magazines for exportation to America, the minister in their presence affected to know nothing of that operation.

Commissioners to Paris, March 12, 1777.

During these conferences the commissioners stated that every step was taken to gratify England publicly, by attending to the remonstrances of our embassador, forbidding the departure of ships which had military stores on board:[1] recalling officers who had leave of absence and were going to join the Americans, *and giving strict orders that our prizes should not be sold in French ports.*

They also reported that Captain Wickes had made a cruise during the winter, (1776–1777,) and had returned to France with *fine prizes*, where they were sold, which proceeding caused some trouble and uneasiness to the French court. Money to the amount of 2,000,000 of livres was also supplied to the commissioners through the French government. Captain Wickes was directed by the commissioners to make another cruise previously to his return to America.

In May, 1777, the commissioners were directed to purchase in such port or place in Europe as it could be done with most convenience and dispatch, a fine fast-sailing frigate, or larger ship. They were instructed to place Captain Paul Jones in command of the vessel, and to employ him as they thought best. In June, 1777, they reported that the ship building at

Committee of Foreign Affairs to commissioners: May 9, 1777.

[1] These were afterward privately permitted to go, or went without permission.

Amsterdam would be nearly as strong as a seventy-four, and might join the squadron in the months of February or March.

On the 16th July, 1777, M. de Vergennes addressed a letter to the commissioners, complaining of the conduct of the American vessels in carrying on hostilities from the French ports, and at the same time informed them that orders had been sent to the ports for their sequestration and detention until sufficient securities could be obtained that they should return directly to their country, and not expose themselves by new acts of hostility to the necessity of seeking asylum in French ports. With regard to the prizes they had orders to go out immediately.

In a letter dated 30th of November, 1777, the commissioners refer to the difficulties arising out of the uncertain policy of the maritime powers, by which the American prizes could not be publicly sold, in consequence of which the purchasers took advantage to beat down the price, and sometimes the admiralty courts were obliged to lay hold of them in consequence of orders from court, obtained by the English embassador.

On the 8th February, 1778, the commissioners announced the signature of the treaties of commerce and alliance between France and the United States, the announcement of which subsequently led to hostilities between France and Great Britain.

In consequence of the proceedings of the American privateers in the French ports, numerous representations were made by Lord Stormont, the British embassador at Paris, to the French government, during the years 1776–'77; in fact, the correspondence with France of that period is principally upon that subject.

In a memorial addressed to M. de Vergennes on the 18th March, 1777, the English embassador made the following demands on the French government:

"Il réclame donc l'accomplissement des assurances formelles qui lui ont été données que le vaisseau Américain commandé par le Sieur Wickes sortirait d'abord du port de l'Orient, et qu'il ne lui serait pas permis de croiser sur les côtes de France.

"1. Il demande la restitution immédiate et plenière du paquebot de Falmouth, vaisseau appartenant au roi son maître.

"2. Celle des quatre vaisseaux marchands mentionnés dessus appartenant à des sujets de Sa Majesté très Chrétienne. Il demande que cette restitution, *avec la valeur de cette partie des cargaisons qui a été détournée, soit fait d'abord et bonâ fide aux propriétaires.*"

These demands arose out of the capture of five British vessels by the American ship Reprisal, which had been taken into the port of L'Orient, and there sold, and appear to be the only instance in which the embassador made any claim for the value of the cargoes.

Notwithstanding these representations, assistance continued to be rendered to the vessels of the colonists in the French ports.

On the 4th of July, 1777, Lord Stormont received instructions from his government, of which the following is an extract:

"The proper representations made by your excellency to the French ministers, with respect to the cutter fitting out at Dunkirk, the artillery and military stores
[137] *collecting for the use of the rebels, and the several causes of complaint given by their governors in the West Indies, meet with His Majesty's approbation.

"The inclosed copy of a letter from Whitehaven will show your excellency that fresh proofs have been lately given of the protection held out to the rebels in the French ports, where the three privateers, the Reprisal, the Lexington, and the Dolphin, have been supplied with everything that was necessary to them for their cruise, the last of them wholly fitted out at Nantes, and it appears that after their cruise they returned to some of the ports of France.

"This account, by His Majesty's command, has been taken into consideration by his confidential servants, and their opinion thereon submitted to His Majesty.

"In consequence thereof I am commanded by His Majesty to signify to your excellency it is his pleasure that you acquaint the French ministers that, however desirous His Majesty may be to maintain the present peace, he cannot, from his respect to his own honor and his regard to the interests of his trading subjects, submit to such strong and public instances of support and protection shown to the rebels by a nation that at the same time professes in the strongest terms its desire to maintain the present harmony subsisting between the two crowns. The shelter given to the armed vessels of the rebels, the facility they have of disposing of their prizes by the connivance of government, and the conveniences allowed them to refit, are such irrefragable proofs of support, that scarcely more could be done if there was an avowed alliance betwixt France and them, and that we were in a state of war with that kingdom.

"'The avidity of gain will tempt merchants in all countries to do very irregular things, and that avidity may not be easily controlled,' but the private views of the traders of France are not concerned in these transactions otherwise than by buying below their value what is supposed to be sold clandestinely in the case of the prizes carried into the French ports. Such a circumstance cannot weigh with a great state,

whose views must be directed by greater considerations. The views of the rebels are evident: they know that the honor of this country, and the proper feelings of the people in general, will not submit to such open violation of solemn treaties and established laws acknowledged by all nations. The necessary consequence must be a war, which is the object they have in view, and they are not delicate in the choice of means that may bring about an end so much desired by them.

"These reflections, my lord, your excellency will communicate to the French ministers, expressing, at the same time, that an explanation is desired, not a menace intended; but, on full consideration of the present circumstances, they must be satisfied peace, however earnestly wished, cannot be maintained, unless an effectual stop is put to our just causes of complaint.

"Lord Macartney and Governor Shirley have transmitted many depositions on oath to ascertain the complaints, the particular subjects of which have been sent to your excellency, but I do not trouble you with them, as you need no proofs to be convinced that the French governors are acting the most unjustifiable conduct in the West Indies, where there is too much reason to suspect they are concerned in the piracies."

In consequence of the seizure of the English vessel Experience, the English embassador addressed the following demand to the French government on the 8th July, 1777:

"Que le vaisseau anglais nommé L'expérience, et sa cargaison, soient restitués d'abord aux propriétaires ou à leur ayant-cause, et que les capteurs reparent tout le dommage qu'ils ont fait. Il serait superflu d'insister davantage sur la justice de cette demande, en parlant à un ministère aussi éclairé que celui de France, et c'est à dessein que l'ambassadeur évite d'appuier sur les circonstances de cette prise; il se bornera à dire que ce bâtiment anglais était à l'avère près du port de Cherbourg quand il à été pris par les pirates américains, qui sont sortis de ce même port pour s'emparer de ce vaisseau, et qui ont été accompagnés de plusieurs sujets de sa majesté très chrétienne, et même de plusieurs soldats français qui ont été complices de cet attentat."

In reply to those representations M. de Vergennes read a *note verbale* to Lord Stormont, the following extract of which relates to the conduct of the French government with regard to the privateers which had been admitted into the French ports:

"C'est d'après cette conviction que le roi me charge de déclarer à votre excellence, *que fidèle à l'observation des traités, que sa majesté s'attend qu'ils ne seront pas moines exactement observés de la part de l'Angleterre, elle ne permettra rien qui pourrait y déroger;* et que sensible aux plaintes que vous avez eu commission de me porter contre les trois corsaires (américains) *la Représaille, le Lexington,* et *le Dolphin,* lesquels, après avoir eu injonction de sortir des ports de France pour n'y plus revenir, y sont cependant rentrés malgré cette défense; sa majesté, bien éloignée d'approuver cette navette
[138] que les traités reprouvent, en est, au contraire, très-mécontente, et ne peut mieux en témoigner son mécontentement qu'en ordonnant, comme elle le fait, de séquestrer les dits corsaires dans les ports où ils peuvent être relâchés pour y être retenus jusqu'à ce qu'on puisse avoir des sûretés suffisantes qu'ils retourneront en droiture dans leur patrie, sans infester de nouveau les mers d'Europe.

"Quant aux prises que ces corsaires ou d'autres peuvent avoir amenées, ou pourront amener, par la suite, dans nos ports, les ordres sont renouvelés non-seulement pour qu'on n'en permette pas la vente, mais encore pour qu'on les fasse partir aussitôt que le vent et les circonstances du temps pourront le permettre, sans se prêter à aucune des exceptions que la cupidité des vendeurs et des acheteurs est ingénieuse à former; et il est enjoint aux officiers préposés à cet effet, d'y tenir sévèrement la main, sauf à en répondre en leur propre et privé nom. Il leur est pareillement recommandé de veiller soigneusement à ce que les facilités de commerce dont les Américains jouissent dans les ports de France n'excèdent pas celles d'un commerce permis.

"Si quelque sujet anglais se croit fondé à intenter une action personnelle contre quelqu'un des sus-dits corsaires, la voie des tribunaux leur est ouverte ici comme en Angleterre. *La loi décide les affaires contentieuses, et jamais l'autorité.*

"Pour ce qui est du *Dolphin*, que votre excellence prétend être un bâtiment français, armé en France, avec l'équipage de la même nation, et n'ayant qu'un seul officier américain, l'examen le plus impartial en sera fait, et si la chose est effectivement telle qu'elle vous a été représentée, il en sera fait justice."

On the 15th of March, 1778, the French embassador in London communicated to the English government the recognition of the independence of the American colonies, and the treaties which had been signed between France and the United States, which led to the withdrawal of the English embassador from Paris, and to the subsequent hostilities between the two countries without any formal declaration of war.

In 1779 the French government published an *exposé des motifs* of its conduct relative to Great Britain, to which a reply was published by Great Britain, written by the historian Gibbon, and contained in vol. iv of his miscellaneous works. In reply to the latter memorial, the French government published a paper entitled "Observations de la cour de Versailles sur le mémoire justicatif de la cour de Londres."[1] In this paper

[1] See "Droit des Gens;" Martens, vol. i. Causes Célèbres, 1761–'88, p. 462.—(F. O. Lib., Oct. 730.)

the following extracts occur in justification of the asylum granted to the American privateers in the French ports:

"En donant asile aux Américains, le roi n'a fait que remplir un des premiers devoirs de l'humanité, en même temps qu'il a exercé un droit inhérent à la souveraineté; droit qui appartient à toutes les nations indépendantes, qui ne peut être restreint que par des conventions, et dont l'exercice est plus étendu en Angleterre que dans aucun autre état de l'Europe. Le roi n'a eu aucune raison de renoncer à l'exercice de ce droit au préjudice des Américains, parce que cette nation ne l'a jamais offensé; et c'eût été de sa part une tyrannie, une cruauté inouïe que de les expulser de ses états, parce qu'ils étaient injustement opprimés par la Grande-Bretagne. Des Américains ont séjourné dans plus d'un pays de l'Europe. En est-il aucun d'où ils n'aient été forcés de sortir; aucun où ils n'avaient joui du droit de l'hospitalité; aucun où ils n'aient été aussi tranquilles et aussi surs que dans les provinces les plus reculées de l'Amérique? A quel titre la cour de Londres prétend-elle donc faire un crime au roi de n'avoir chassé les Américains de ses états?

"Non-seulement le roi a donné un asile aux Américains, mais il a aussi admis leurs corsaires et leurs prises; et c'est là un des principaux griefs de la cour de Londres, sur lequel elle s'est appésantie la plus, et qui a fourni la matière la plus ample à ses déclamations et à ses reproches. Mais quelques mots suffiront pour établir les véritables principes sur cette matière, et pour démontrer que le ministre anglais les a méconnus volontairement.

"Les roi est le maître d'admettre dans ses ports les navires de toutes les nations de l'univers. Ce droit s'étend sur les bâtiments de guerre comme sur les bâtiments marchands; et il n'admet de restriction que celles qui sont établis par des traitrés. Celui d'Utrecht en renferme relativement aux bâtiments de guerre: l'article XV. porte en substance, 'que les parties contractantes' (la France et l'Angleterre) 'ne permettront pas à leurs ennemis respectifs d'armer dans leurs ports, d'y vendre leurs prises, et d'y séjourner au delà du temps requis pour réparer leurs dommages et se pourvoir des choses nécessaires pour être en état de remettre à la mer. Le roi a suivi ponctuellement cette conduite par rapport au corsaires américains. Sa volonté, à cet égard, est constatée par les ordes les plus précis, et surtout par leur exécution. Il est vrai que le ministère anglais avance *que ces ordres étaient illusoires, qu'ils étaient transgressés ouvertement, impunément, et même sous l'autorité du gouvernement;* mais cette accusation est une calomnie d'autant plus révoltante qu'elle est contraire à la notoriété publique, constatée même par les gazettes ministérielles imprimées en Amérique.

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"Si l'on prétend que le roi aurait dû refuser toute retraite aux corsaires américains, parce qu'il aurait dû les regarder comme pirates, on demande de quel droit le roi aurait pu les juger tels? Les Américains ne sont point ses sujets; il n'est ni le juge ni l'arbitre des querelles domestiques de l'Angleterre. Il avait adopté la neutralité, et il l'aurait enfreinte de la manière la plus odieuse en prononçant sur l'état des Américains. Ces principes sont certains, et c'est une véritable dérision que de les méconnaître, comme ce serait une adulation, une faiblesse inexcusable que de les violer. La cour de Londres seule a eu des pirates en mer; ce sont ses bâtiments marchands qui, en pleine paix, ont enlevé des bâtiments français; et cette cour ne soutiendra pas, sans doute, que ce procédé était contraire à ses ordres ou à ses intentions, puisque les coupables, quoique dénoncés, sont demeurés impunis, et que les navires pris n'ont pas été restitués."

It results from the foregoing statements that no such contrast between the conduct of France on the occasion of the revolt of the British provinces in 1774, and that of Great Britain on the occasion of the recent insurrection in the United States, as that which Mr. Adams has sought to draw, can really be drawn. Great Britain by no act of hers conferred upon her revolted colonies any belligerent character, or sought to enforce against neutrals belligerent rights; on the contrary, for a long period she dealt with her colonies as revolted provinces by acts of ordinary legislation, and by restrictions on their trade. On the other hand, the United States, within a few months after the commencement of the insurrection, conferred upon the Southern States belligerent rights by the proclamation issued by the President of the United States on the 19th of April, 1861, establishing the blockade of the Southern States, "in pursuance of the laws of the United States and of the laws of nations in such cases provided."

FOREIGN OFFICE, *October* 30, 1865.

[Inclosure 2 in No. 11.]

Memorandum respecting representations made by Mr. Adams of breaches of neutrality during the civil war.

1. BERMUDA.

August 15, 1861.

Letter acknowledged and referred to Treasury, August 15.

Steamer said to be fitting out for confederates at Hartlepool. Not a case for interference. Proved to be a blockade-runner.

North America, No. 1, 1861, pp. 69, 70.

2. SUMTER.

September 30, 1861.

Complaint of the Sumter having been acknowledged as a ship of war at Trinidad by the governor and the captain of Her Majesty's ship Cadmus.

North America, No. 1, 1861, pp. 82–84.

The circumstances had been already reported and the opinion of the law-officers taken, (September 16,) who decided that no irregularity had been committed. Mr. Adams was informed accordingly.

The Sumter had run the blockade of the Mississippi, whence she went to Puerto Cabello, and then to Trinidad. She was afterward laid up at Gibraltar, where she was watched by the United States steamer Tuscarora. While at Gibraltar the captain was assassinated by the lieutenant. The ship was dismantled and sold to a British firm in December, 1862, and came to Liverpool. Her proceedings there occasioned a subsequent correspondence.

3. ESTABLISHMENT OF A CONFEDERATE DEPOT AT NASSAU.

October 1, 1861.

Letter acknowledged and referred to colonial office, October 8.

The allegations in Mr. Adams's letter were denied by Mr. H. Adderley, the person who was stated to have the shipment of the supplies, and Mr. Adams expressed his satisfaction at the denial. (*Mr. Adams, January* 10, 1862.)

North America, No. 1, pp. 117, 118.

4. NASHVILLE.

November 22, 1861.

Acknowledged and referred to law-officers, November 23.

[140] This was a complaint of the confederate steamer Nashville having been permitted to enter Southampton after destroying the American bark Harvey Birch.

North America, No. 6; Tuscarora and Nashville.

The Nashville, which had escaped from Charleston, proved to be regularly commissioned as a ship of war, and was, under the advice of the law-officers, acknowledged accordingly.

For correspondence as to the proceedings of the Nashville and United States steamer Tuscarora at Southampton, see Parliamentary Papers, presented 1862.

5. ORETO, OR FLORIDA.

February 18, 1862.

Acknowledged and referred to treasury, February 18.

Alleged to be fitting at Liverpool for the confederate service.

The customs officers reported that she was intended for a merchant-vessel and was stated to be going to Italy. No proof was forthcoming of her equipment, and she sailed, March 22, without any armament on board. On arriving at Nassau she was seized by Her Majesty's ship Greyhound for violation of foreign-enlistment act. The case was tried in the vice-admiralty court, and the ship released, August 2, 1862. She then ran the blockade of Mobile, and having armed there, escaped again as the Florida ship of war, under the command of Captain Maffit.

Her career continued until her seizure in the harbor of Bahia by the United States ship Wachusetts, in October, 1864.

Reference to foreign-enlistment act.

In the second representation made by Mr. Adams, March 25, 1862, the following passage occurs, which, as being the first reference to the operation of the foreign-enlistment act, may be worthy of remark:

Mr. Adams, March 25, 1862.

"It is with the deepest regret that the President directs me to submit to Her Majesty's Government a representation of the unfortunate effect produced upon the minds of the people of the United States from the conviction that nearly all of the assistance that is now obtained from abroad by the persons still in arms against their Government, and which enables them to continue the struggle, comes from the kingdom of Great Britain and its dependencies. Neither is this impression relieved by the information that the existing municipal laws are found to be insufficient, and do not furnish means of prevention adequate to the emergency."

6. BLOCKADE-RUNNERS LADEN IN ENGLAND.

March 10, 1862.

Letter acknowledged March 13. Referred to law-officers March 12, who decided (March 22) that Her Majesty's government could not interfere.

7. EMILY ST. PIERRE.

April 24, 1862.
Acknowledged and referred to law-officers, April 24.
A blockade-runner which, after capture, was rescued by her master and two men from the prize crew and brought to Liverpool.
Under advice of law-officers Her Majesty's government refused to interfere. North America, No. 11, 1861.

8. ALABAMA.

June 23, 1862.
Acknowledged, referred to treasury and law-officers, June 25.
A vessel known as the No. 290, building by Messrs. Laird, at Liverpool. Law-officers reported (June 30) that there was not sufficient evidence to proceed on, but that the vessel should be watched. The reports received from the customs were sent to Mr. Adams, (July 4,) with a suggestion that the United States consul at Liverpool should procure further proofs of equipment, &c. Mr. Adams acknowledged, and promised to act on this suggestion, (July 7.) He sent further depositions accordingly, (July 22 and 24,), and accompanied the latter letter by an opinion of Mr. Collier in favor of seizure. The law-officers reported (July 29) that she should be seized; but on the morning of the 29th she had sailed from the Mersey, under pretext of a trial-trip. A copy of the law-officers' opinion was sent to the Bahamas in case of the Alabama going there. She, however, proceeded to Angra Bay, Azores, where she met the Bahama and Agrippina, with her armament, her commander, Captain Semmes, and forty-two seamen. She then hoisted the confederate flag, and sailed for Port
[141] Royal, Martinique, *next to Blanco Island, (belonging to Venezuela,) where she coaled, then to Arcas Keys, then destroyed the United States ship Hatteras, off Galveston, and afterward to Jamaica, where she was received and recognized as a regularly commissioned ship of war.
She continued her depredations at the Cape of Good Hope and elsewhere, until she was finally sunk by the United States ship Kearsarge, off Cherbourg, June 19, 1864.
North America, No. 3, 1863. Custom-house correspondence, presented 1863. North America, No. 1, 1864. Ditto, No. 3, 1864. Ditto, No. 3, 1865.

Naval-reserve men dismissed for engaging on board Alabama.

It having been found that four-naval reserve men had sailed in the Alabama, on her first start, their names were erased from the naval-reserve list. (*Admiralty, February* 27, 1863.)

9. HECTOR.

November 17, 1862.
Referred to admiralty, November 18.
This was an inquiry whether the Hector was building for Her Majesty's government; and, after reference to the admiralty, was answered in the affirmative.

10. THE GEORGIANA.

January 16, 1863.
Acknowledged and referred to treasury and home office, January 17.
Said to be fitting at Liverpool for confederates, though Mr. Adams could not divulge the authority on which the statement was made.
The reports from the customs sent to Mr. Adams on the 18th, 19th, and 27th January went to show that the vessel was not for war purposes.
She sailed on the 21st January for Nassau, and was wrecked in attempting to enter Charleston, March 19, 1863.

11. CONFEDERATE AGENCY IN ENGLAND.

February 9, 1863.
Acknowledged February 12; referred to law-officers, treasury, and home office, February 23.
This was the case of the intercepted correspondence. North America, No. 8, 1863.
Answered March 9; no cause to interfere.

12. SUMTER, OR GIBRALTAR, AT LIVERPOOL.

February 16, 1863.
Referred to law-officers, February 17.
After her sale at Gibraltar, (see No. 2,) the Sumter's name was changed to the Gibraltar. Mr. Adams complained of her being refitted for confederate service. The law-officers reported March 3, and Mr. Adams was informed, March 9, that there was no case for interference. Custom-house correspondence, presented 1863, 1864.
It appeared that guns were shipped on board the Gibraltar, but they proved to be siege guns. She was wrecked in attempting to enter Charleston in July.

13. PAYMENT OF MEN, LATE OF ALABAMA, IN ENGLAND.—MESSRS. KLINGENDER'S AGENCY.

March 4, 1863.

Acknowledged and referred to law-officers, March 12, 1863, who decided that no offense had been committed.

14. PHANTOM AND SOUTHERNER.

March 26, 1863.

Acknowledged and referred to treasury and home office March 27, law-officers June 2.

Phantom fitting at Liverpool, Southernor at Stockton-on-Tees. Mr. Adams informed that there was no ground for interference, July 3.

Both vessels proved to be intended for blockade-runners.

15. ALEXANDRA.

March 30, 1863.

Acknowledged and refered to law-officers, treasury, and home office, March 31, 1863.

[142] * Reports were received from the treasury on the 31st, and home office April 1. On the 4th of April the law-officers advised seizure.

The trial ended in the discharge of the vessel, and the costs and damages having been compromised for £3,700, she was delivered to the owners. She was then sent to Nassau, where she was again tried on a similar charge of violation of foreign-enlistment act, and again acquitted. She has remained there ever since, and is now known as the Mary.

16. THE VIRGINIA OR JAPAN.

April 8, 1863.

Acknowledged and referred to the home office and treasury, April 8.

When Mr. Adams complained, this vessel had already sailed from Greenock on the 2d of April for Alderney. Instructions were sent to the governor of Guernsey to have her watched. She did not, however, go to the Channel Islands, but went to the coast of France, where she met a small steamer, the Alar, of Newhaven, off Morlaix, and took from her her crew and equipment. She then apparently went into Cherbourg.

An explanation was furnished to Mr. Adams, April 21, and on the 30th of April the law-officers reported that no offense under the foreign-enlistment act had been committed by the Alar. The Virginia was subsequently known as the Georgia, and her arrival at Liverpool in 1864 occasioned a further correspondence.

17. IRON-CLADS AT LIVERPOOL.

July 11, 1863.

North America, No. 5, 1864. Acknowledged and referred to treasury, home office, and law-officers, July 13.

These vessels, known as the El Monnassir and El Tousson, and said to have been ordered of Messrs. Laird, of Birkenhead, by M. Bravay for the Egyptian government, were seized, and eventually purchased for Her Majesty's service.

18. CANTON OR PAMPERO.

October 17, 1863.

Acknowledged and referred to treasury, home office, and admiralty, October 19.

This vessel, which was being constructed in the Clyde, nominally as a merchant-ship for the China trade, was, after inquiry, and under the advice of the lord advocate, seized and tried. The Crown took judgment by default, the case being undefended, and the vessel remained under seizure until the close of the war. (*Lord Advocate, October* 19, 1865.)

19. ALLEGED CONFEDERATE DEPOT AT BERMUDA.

November 3, 1863.

Acknowledged and referred to the law-officers November 5, who reported (November 12) that there was no case for interference. Mr. Adams informed accordingly, November 27.

20. RAPPAHANNOCK.

November 28, 1863.

Acknowledged November 30: referred to home office, admiralty, treasury, and law-officers, November 29.

This vessel, formerly Her Majesty's ship Victor, had been sold by the admiralty to Messrs. Coleman in October, but without masts or sails. (*From Admiralty, October* 24: *to Admiralty, October* 24.)

She sailed from Sheerness on the morning of the 25th of November in a very incomplete state, the riggers being still on board, and arrived at Calais on the 26th. These circumstances had already been reported when Mr. Adams's representation was received.

Prosecution of Mr. Rumball.

Mr. Rumball, the head of the outfitting or rigging department at Sheerness dockyard, was prosecuted for his share in the transaction, but was acquitted on trial at the Queen's Bench on the 4th of February, 1865. He was, however, placed on half-pay. (*To Mr. Adams, March* 8, 1865.)

Intended prosecution of Messrs. Anson and Brown.

It was also intended to prosecute two other persons, seamen, for engaging men to serve in the Rappahannock, under the name of the Scylla, but the prosecution was not carried out, the men having, it is believed, absconded.

[143] * The Rappahannock remained at Calais until the conclusion of the war, when she was sold to a British firm and brought to England.

21. CONFEDERATE AGENCY AT LIVERPOOL.

December 7, 1863.

Acknowledged December 9; referred to law-officers December 9.

This was the case of Jones & Co., accused of enlisting men for confederate service.

The law-officers advised that J. Jones and R. Highat and their clerk Wilding, and another person named Maltman, should be proceeded against. (*Law-Officers, December* 12, 1863.)

The home office accordingly proceeded against the two principals at the spring assizes; the case was removed by writ of *certiorari* to the Queen's Bench, where they were both convicted; but certain points were reserved for argument at the next term, and on the 23d of November, 1864, they were condemned to pay a fine of £50 each.

22. CAPTAIN CATOR.

December 29, 1863.

Acknowledged and referred to admiralty December 30, 1863.

This was a complaint that an officer in Her Majesty's navy had been engaged in running the blockade. The admiralty reported that they had no knowledge of it, and could not interfere. (*December* 31, 1863.)

23. NAVAL-RESERVE MEN ENLISTED FOR FLORIDA AND GEORGIA.

January 11, 1864.

Acknowledged January 13; referred to home office January 13.

Three naval-reserve men who were traced were struck off the list. (*Admiralty, January* 21.)

24. NAVAL-RESERVE MEN IN ALABAMA.

January 13, 1864.

Acknowledged and referred to home office January 14.

Mr. Adams sent a list of nineteen men said to belong to naval reserve; but of this number, only three could be traced as actually belonging to it. (*Admiralty, January* 29, *February* 18.)

25. WILL O' THE WISP.

February 22, 1864.

Acknowledged and referred to colonial office February 25.

This vessel was said to be going to Bermuda to convey stores to the confederate government.

No case appeared for interference. (*Colonial Office, May* 16, 1864.)

26. AMPHION.

March 18, 1864.

Acknowledged and referred to home office March 18.

Said to be equipping for confederates.

Law-officers reported that no case was made out. (*Law-Officers, March* 31.)

She was eventually sent to Copenhagen for sale as a merchant-ship.

27. HAWK.

April 16, 1864.

Acknowledged and referred to home office, lord advocate, and treasury, April 18.

Supposed to be building at Renfrew for confederates; nominal owner, Mr. Begbie.

The case had been already reported on by customs. (*Treasury, April* 4.) and the papers sent to the lord advocate. On the 13th of April she left the Clyde without a register, and came to Greenhithe. The law-officers decided (*April* 26) that there was not evidence to warrant detention, and the treasury were so informed May 6.

She proved to be a blockade-runner. (*Home Office, January* 19, 1865.)

28. ENLISTMENTS FOR THE RAPPAHANNOCK.

April 16, 1864.

Referred to law-officers April 18.

[144] *Four persons were charged with these enlistments, viz: Seymour, Cunningham, Buchanan, and Bradshaw. The law-officers recommended they should be prosecuted. (*Law-Officers, April* 28.)

The first three were proceeded against by home office, (*Home Office, July* 18, 1864, *August* 16, 1864.) Seymour pleaded guilty, and was discharged on recognizances to appear when called upon: Cunningham was tried and convicted, and similarly discharged on recognizances of £150; Buchanan pleaded guilty, and was similarly sentenced: Bradshaw was not prosecuted.

29. GEORGIA AT LIVERPOOL.

May 9, 1864.

Acknowledged and referred to law-officers May 10.

This vessel, formerly the Virginia, or Japan, (See No. 16,) arrived at Liverpool under confederate colors, and Mr. Adams complained of her reception in the character of a ship of war. It was, however, decided that she should be thus received. Soon afterward she was dismantled, and sold to the British firm of Bates & Co., as a merchant-ship. Mr. Adams again complained, July 27, 1864, of her being refitted as a ship of war. This proved to be unfounded. Messrs. Bates sent her out to Portugal, but she was captured by the United States ship Niagara, off Lisbon, and taken to the United States as a prize.

Customs notification against dismantling or selling belligerent ships in British ports.

The circumstances of this case gave rise to the customs notification of the 11th of August, forbidding the ships of war of the belligerents in America from being dismantled or sold in British ports.

30. ENLISTMENTS FOR GEORGIA.

May 28, 1864.

Acknowledged June 1, and referred to home office June 1.

Prosecution of Campbell.

This was a complaint against a person named Campbell, of Liverpool. Under advice of law-officers, he was prosecuted by home office, (*Home Office, June* 16, 1864,) and pleaded guilty, and was discharged on recognizances of £150 to appear when called upon.

31. SHENANDOAH, OR SEA KING.

November 18, 1864.

Acknowledged November 19.

The case of this vessel had already been reported by Her Majesty's consul at Teneriffe. The Sea King, a merchant-vessel of an Indian trading-company, was sent to Funchal, where she was met at Desertas, off Funchal, on the 20th of October, by the Laurel, Captain Corbett, with armament and crew. The transshipment took place there, and the Laurel returned to England, having touched at Funchal, on the 30th of October.

Prosecution of Captain Corbett.

The law-officers recommended the prosecution of Captain Corbett for his share in inducing men to ship on board the Shenandoah. The home office instituted proceedings accordingly, (*Home Office, December* 2, 1864,) and the case stands for trial next term.

32. CITY OF RICHMOND.

January 14, 1865.

Acknowledged January 16; referred to home office January 15, and to law-officers January 19.

This vessel was engaged, as was stated, to carry the crew of the Florida, who had come to England from Brazil, from London to Nassau. The law-officers reported that no case was made out. (*Law-Officers, January* 20, 1865.)

33. VIRGINIA AND LOUISA ANN FANNY.

January 30, 1865.
Acknowledged, and referred to treasury February 1, 1865.
Vessels said to be in course of equipment at London.

No case was established, and they both proved to be blockade-runners, as [145] reported *by the governor of the Bahamas, who had been instructed to watch their proceedings. (*Colonial Office, April* 19 *and May* 11, 1865.)

34. HERCULES AND AJAX.

February 7, 1865.
Acknowledged, and referred to treasury and home office February 8 and 9.
Both vessels built in the Clyde.

Ajax first proceeded to Ireland, and was detained at Queenstown by the mutiny of some of the crew, who declared she was for the confederate service. She was accordingly searched, but proved to be only fitted as a merchant-ship. The governor of the Bahamas was instructed to watch her at Nassau. On her arrival there she was again overhauled, but nothing suspicious discovered, and the governor reported that she was adapted, and he believed intended, for a tug-boat.

The Hercules being still in the Clyde, inquiries were made by the customs there, who reported that she was undoubtedly a tug-boat and the sister ship to the Ajax.

Upon receiving this report it was proposed to prosecute the informant, Smith, for perjury, but it was found necessary for that purpose to produce the original affidavit, of which Mr. Adams had only sent a copy. Mr. Adams was, accordingly, written to for it on the 28th of June last, but nothing has since been done in the matter.

Mr. Adams's representations may be divided into four classes:
1. Outfit of vessels for the confederate navy in British ports.
2. Reception of confederate war-vessels in British ports.
3. Enlistments for the confederate service.
4. Miscellaneous.

Mr. Adams's representations.

1. *Outfit of vessels for the confederate navy in British ports.*

It will be seen from the foregoing statement that Mr. Adams complained of no less than nineteen vessels, viz:

1. Bermuda.
2. Oreto, or Florida.
3. Alabama.
4. Georgiana.
5. Phantom.
6. Southerner.
7. Alexandra.
8. Virginia, or Japan, (Georgia.)
9, 10. Iron-clads.
11. Canton, or Pampero.
12. Rappahannock.
13. Amphion.
14. Hawk.
15. Shenandoah, or Sea King.
16. Louisa Ann Fanny.
17. Virginia.
18. Hercules.
19. Ajax.

1. Outfit of vessels for the confederate navy in British ports.

Names of vessels complained of.

Of these, five subsequently hoisted the confederate ensign—

Oreto, or Florida.
Alabama.
Virginia, or Japan.
Rappahannock.
Shenandoah.

Five vessels which were converted into ships of war.

The Oreto, or Florida, besides having been watched by the customs previously to her leaving England, was seized and tried at Nassau and acquitted. She then ran into Mobile, took her armament on board, and through the negligence of the blockading ship, United States ship Oneida, (whose captain, Captain Preble, was dismissed the service in consequence,) succeeded in escaping, and issued on her career as a regularly commissioned ship of war, the Florida.

Oreto, or Florida.

This vessel, therefore, cannot be said to have been equipped or fitted out in a British port, nor can the British home or colonial authorities be accused of any want of activity with regard to her.

[146] *The Alabama, it is true, succeeded in escaping by a trick on the morning of the very day on which she would have been seized. Her armament was taken on board off Terceira, and her first recognition as a confederate war-vessel was in a French (Port Royal, Martinique) and not a British port.

Alabama.

Virginia, or Japan. This vessel, it will have been observed, sailed before any information of her character had reached Her Majesty's government, and was, in fact, taking in her armament in French waters on the very day on which Mr. Adams's representation was dated.

Virginia, or Japan (Georgia).

The same thing occurred with regard to the Rappahannock, which was at Calais on the 26th of November, 1863. Mr. Adams's representation not being received until the 28th. In this case, however, the precipitancy with twhich the vessel was dispatched, in an incomplete state, to avoid detention, prevented her ever being available for service; and although she had the confederate flag flying when she entered Calais, she had neither guns nor ammunition on board.

The Shenandoah, or Sea King, escaped in a similar manner to the Virginia and Rappahannock; and the first intimation that was received of her proceedings was from Her Majesty's consul at Teneriffe, reporting the transfer of crew and armament to her from the Laurel, at the Desertas, off Funcha. In this case, indeed, had information been received in time, it is not probable that she could have been detained, as she was a regular trading-vessel, well known as the Sea King in the East India trade.

In fact, as regards all these five vessels, the case may be shortly stated that, in three instances, information was not received in time for Her Majesty's government to take any measures of prevention; in one instance the vessel was equipped and armed in a confederate port; and in the remaining one the ship succeeded in baffling the vigilance of the authorities at the very moment of her intended seizure. The Virginia, (Georgia,) the Alabama, and the Shenandoah were alike armed and manned in foreign waters.

During the four years of the civil war, from 1861 *to* 1865, *not a single armed ship for the confederate service was dispatched from any port either of Great Britain or the British colonies; and only one vessel, the Alabama, which it could have been possible to detain, escaped for conversion into a cruiser.*

On the other hand, in looking at the preceding list, we see that four vessels were proceeded against in England, and thereby prevented from entering the confederate service, viz, the Alexandra, the two iron-clads, and the Canton, or Pampero.

Although the prosecution of the first of these was not successful, it served to detain her for a long period; and a second prosecution, which was instituted at Nassau, has kept her under seizure until the end of the war. The iron-clads, the most formidable of all the intended cruisers, were thus similarly detained, and eventually purchased to avoid further litigation; while the Canton, or Pampero, was condemned, and remained in the hands of the Crown until the occasion for her seizure had passed.

The remaining ten vessels denounced by Mr. Adams proved to be ordinary merchantmen, intended chiefly for running the blockade, which is not an offense amenable to the law.

To these cases may be added the alleged refit of the Sumter at Liverpool, the report of which proved unfounded.

The list includes all the suspected vessels in British ports, with the exception of two, the Almandares and Pinero, which were alleged, though not by Mr. Adams, to be equipping at Montreal. No case was made out. (*Colonial Office, February* 6, 1865.)

When the delay in seizing the Alabama is so severely criticised by Mr. Adams, it must be remembered that in the two preceding representations his information had proved to be erroneous, the Bermuda being evidently not intended for a ship of war, and the Oreto having been found innocent in a court of law. The latter was subsequently converted into a cruiser, but the readiness with which a merchant-vessel can be made available for belligerent purposes has been shown by the fact that the most efficient blockading ships in the Federal Navy were captured blockade-runners.

2. *Reception of confederate vessels of war in British ports.*

Sumter. This vessel, the first that appeared in European waters, was, as stated in the memorandum, regularly commissioned and equipped, and sailed from the Mississippi. The Nashville was likewise of American origin, having sailed from Charleston. She had been intended to bring the confederate commissioners to England, but it appearing doubtful whether her tonnage would admit of her crossing Charleston bar, they proceeded by another route. The first case of the destruction of a ship at sea,

[147] which was represented by Mr. Adams, arose out of the destruction of the Harvey Birch by the Nashville. He adduced it as a reason for her not being received in a British port.

Tuscaloosa, a Besides these two cruisers, the confederate government owned the prize of the Alabama, which was equipped and commissioned from the Alabama, and with regard to which a correspondence took place at the Cape of Good Hope. The Tallahassee, which escaped from Wilmington, and on her first cruise in six days is said to have destroyed fifty-four vessels. The Talahassee was originally the blockade-runner Atalanta, and ended her career by being reconverted into a merchantman, the Chameleon, and brought to Liverpool. The Chicamauga, formerly the blockade-runner Edith, (*Colonial Office, December* 31, 1864,) whose history

is obscure, as it does not appear where she sailed from, or what became of her. Besides these there were one or two other small vessels, such as the Etta, or Retribution, which made short cruises from blockaded ports to the Bahamas and West India islands.

Retribution and other.

There was also the Olinde, or Stonewall, which sailed from Bordeaux, and which, had she been able to enter on her career as a cruiser, would have been a most dangerous adversary.

Olinde.

It will be seen, therefore, that the principal confederate cruisers were not all of English origin; four of them having been regularly commissioned in confederate ports, Sumter, Nashville, Florida, and Talahassee, and one, Stonewall, having sailed from a French port.

Consul Barrow's No. 6: February 4, 1865.

3. *Engagement of men for the confederate service.*

In each of these cases where evidence could be procured, prosecutions were instituted, and where men of the naval reserve could be traced, their names were erased from the naval reserve list.

3. Engagement of men for the confederate service.

The cases represented were the following: Jones & Co., engagement of naval-reserve men on board the Florida, Georgia, and Alabama; Campbell, of Liverpool; and enlistments for the Rappahannock.

Names of ships.

4. *Miscellaneous.*

Under this head come the representations respecting the alleged confederate depots at Nassau and Bermuda; the proceedings of confederate agents in England; the lading of blockade-runners in England; Emily St. Pierre; confederate agency; payment of Alabama seamen; Captain Cator's employment in blockade-running; the shipment of stores for the confederate government in the Will o' the Wisp; the conveyance of the Florida seamen to Nassau, in the City of Richmond; the reception of the converted Sumter, or Gibraltar, at Liverpool; and the sale and conversion of the Georgia there.

4. Miscellaneous.

List of cases.

In none of these cases could Her Majesty's government interfere.

Summary of steps taken by Her Majesty's government.

The following is a summary of the steps taken by Her Majesty's government to prevent or punish breaches of the Queen's neutrality:

Summary of steps taken by Her Majesty's government.

Proceedings taken with regard to vessels.

Five prosecuted—

1. Oreto, at Nassau.
2. Alexandra, in England and at Nassau.
3, 4. Iron-clads.
5. Canton, or Pampero.

Proceedings taken with regard to vessels.

Also orders given to detain the Alabama, had she touched at Queenstown or Nassau, after her evasion from Liverpool.

The governor of the Bahamas was likewise instructed to watch other vessels, regarding which representations had been made, as the Louisa Ann Fanny, &c.

North America, No. 3, 1863, pp. 11, 12.

Prosecutions for engagement of men for confederate service.

1. Mr. Rumball, (Rappahannock,) acquitted.
2. Jones and Highat, (Georgia and Florida,) convicted.
3. Campbell, (Georgia,) convicted.
4. Seymour, Cunningham, and Buchanan, (Rappahannock,) convicted.
5. Captain Corbett, (Shenandoah,) case pending.

Prosecutions for enlistments.

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[148] *When it was found that such vessels as the Rappahannock and Amphion, although useless to Her Majesty's navy, might be reconverted into confederate cruisers, instructions were given that no more ships should be sold out of Her Majesty's navy.

Moreover, when Captain Osborne's fleet returned from China, and it was feared that the vessels composing it might fall into confederate hands, Her Majesty's government interposed both in India and in England to prevent their sale.

When the sale and conversion of the Georgia was complained of, a customs notification was published, forbidding vessels of war to be sold and dismantled in British ports.

Finally, as will have been shown by the preceding statement, every representation of Mr. Adams was considered immediately on its receipt, and referred, when requisite, to the law-officers or other departments of Her Majesty's government, without even a day's delay.

FOREIGN OFFICE, *October* 30, 1865.

No. 12.

Mr. Adams to the Earl of Clarendon.

LEGATION OF THE UNITED STATES,
London, November 7, 1865. (Received November 7.)

MY LORD: I have the honor to submit to your consideration the copy of a letter received by me from the vice-consul of the United States at Liverpool, touching the arrival yesterday of the vessel known as the Shenandoah at that port.

Although necessarily without special instructions relative to this case, I do not hesitate to assume the responsibility of respectfully requesting of Her Majesty's government to take possession of the said vessel, with a view to deliver it into the hands of my Government, in order that it may be properly secured against any renewal of the audacious and lawless proceedings which have hitherto distinguished its career.

I perceive, by the terms of the vice consul's letter, that some of the chronometers saved from the vessels which have fallen a prey to this corsair are stated to be now on board. I pray your lordship that proper measures may be taken to secure them in such manner that they may be returned, on claim of the owners to whom they justly belong.

Inasmuch as the ravages of this vessel appear to have been continued long after she ceased to have a belligerent character, even in the eyes of Her Majesty's government, it may become a question in what light the persons on board and engaged in them are to be viewed before the law. The fact that several of them are British subjects is quite certain. While I do not feel myself prepared at this moment, under imperfect information, to suggest the adoption of any course in regard to them, I trust I may venture to hope that Her Majesty's government will be induced voluntarily to adopt that which may most satisfy my countrymen, who have been such severe sufferers, of its disposition to do everything in its power to mark its high sense of the flagrant nature of their offenses.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[Inclosure in No. 12.]

Mr. Wilding to Mr. Adams.

UNITED STATES CONSULATE.
Liverpool, November 6, 1865.

SIR: I beg to inform you of the arrival at this port this morning of the pirate-steamer Shenandoah. She is now anchored in the Sloyne, in the river Mersey. She arrived with the confederate flag flying, but lowered it soon after entering the river. She has a crew of 133 men, as near as I have been able to learn, and has on board a number of the chronometers taken from vessels destroyed.

I shall be glad to receive your instructions concerning her.

Very respectfully, I am, &c.,
(Signed) H. WILDING.

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[149] *No. 13.

The Earl of Clarendon to Mr. Adams.

FOREIGN OFFICE, *November* 7, 1865.

SIR: I have the honor to acknowledge the receipt of your letter of this day, having reference to the arrival at Liverpool of the late confederate steamer Shenandoah, and I lose no time in confirming to you officially what I stated to you yesterday evening privately, that the Shenandoah was yesterday given up by her commander to Her Majesty's authorities at Liverpool, and that she is now in the custody of Her Majesty's naval force at that port.

I have to add that the other points adverted to in your letter will receive immediate attention, and I hope shortly to be able to communicate further with you on the subject.

I am, &c.,
(Signed) CLARENDON.

No. 14.

The Earl of Clarendon to Mr. Adams.

FOREIGN OFFICE, *November* 11, 1865.

SIR: I have the honor to state to you, in reply to your letter of the 7th instant, that it appears, by a communication from the board of admiralty, that the Shenandoah was on the 10th instant delivered up by the senior naval officer at Liverpool to the United States consul at that port, with everything on board of her, the consul being also furnished with the inventories of the stores, &c., as received by the naval authorities from the late commander of the vessel.

With regard to the officers and crew of the Shenandoah, I have the honor to state to you, that on the arrival of the vessel at Liverpool it was ascertained that three bad cases of scurvy were on board of her, and that a number of men had symptoms of that disease; and it was therefore necessary that measures should immediately be taken for disposing of the officers and crew.

I need scarcely observe to you that any proceedings against persons in their situation, as indeed is the case with all other persons in this country, must be founded on some definite charge of an offense cognizable by British law, and must be supported by proper legal evidence;

and that in the absence of such charge, duly supported by evidence, Her Majesty's government could not assume or exercise the power of keeping any of them under any kind of restraint.

Her Majesty's government were not in possession of any evidence which could be produced before any court or magistrate for the purpose of controverting the statement made to them by the commander of the Shenandoah in the letter of which I inclose a copy, or for the purpose of showing that the crime of piracy had in fact been committed by the vessel.

It only remained, therefore, to ascertain whether any of the parties were British subjects, and, if so, whether any sufficient evidence could be obtained against them to warrant a prosecution on a charge of violating the provisions of the foreign-enlistment act by taking part in hostilities on board the vessel.

Accordingly, the board of admiralty were instructed by the secretary of state for the home department to cause the necessary inquiry to be instituted in regard to the presence on board of persons of the last-mentioned class, and if evidence could be obtained against any of them, to cause them to be detained and taken before a magistrate; and to allow the rest to go free.

In pursuance of these instructions, the senior naval officer at Liverpool at once proceeded on board the Shenandoah, and having mustered the crew, he reports himself to have been "fully satisfied that they were all foreigners, and that there were none known to be British-born subjects on board;" whereupon they were all landed with their effects.

I am, &c.,
(Signed) CLARENDON.

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[150] *[Inclosure in No. 14.]

Captain Waddell to Earl Russell.

SHENANDOAH, *November* 6, 1865. (Received November 7.)

MY LORD: I have the honor to announce to your lordship my arrival in the waters of the Mersey with this vessel, lately a ship of war under my command, belonging to the Confederate States of America.

The singular position in which I find myself placed, and the absence of all precedents on the subject, will, I trust, induce your lordship to pardon a hasty reference to a few facts connected with the cruise lately made by this ship.

I commissioned the ship in October, 1864, under orders from the naval department of the Confederate States; and, in pursuance of the same, commenced actively cruising against the enemy's commerce. My orders directed me to visit certain seas in preference to others; in obedience thereto, I found myself in May, June, and July of this year in the Okhotsk Sea and Arctic Ocean. Both places, if not quite isolated, are still so far removed from the ordinary channels of commerce that months would elapse before any news could reach there as to the progress or termination of the American war. In consequence of this awkward circumstance, I was engaged in the Arctic Ocean in acts of war as late as the 28th day of June, in ignorance of the serious reverses sustained by our arms in the field, and the obliteration of the government under whose authority I had been acting.

This intelligence I received for the first time on communicating at sea, on the 2d of August, with the British bark Barracouta, of Liverpool, fourteen days from San Francisco. Your lordship can imagine my surprise at the receipt of such intelligence, and I would have given to it little consideration if an Englishman's opinion did not confirm the war news, though from an enemy's port. I desisted instantly from further acts of war, and determined to suspend further action until I had communicated with an European port, where I would learn if that intelligence where true. It would not have been intelligent in me to convey this vessel to an American port for surrender simply because the master of the Barracouta had said the war "was ended." I was in an embarrassing position; I diligently examined all the law writers at my command, searching a precedent for my guidance in the future control, management, and final disposal of the vessel. I could find none. History is, I believe, without a parallel.

Finding the authority questionable under which I considered this vessel a ship of war, I immediately discontinued cruising, and shaped my course for the Atlantic Ocean.

As to the ship's disposal, I do not consider that I have any right to destroy her, or any further right to command her. On the contrary, I think that as all the property of government has reverted, by the fortune of war, to the Government of the United States of North America, that therefore this vessel, inasmuch as it was the property of the Confederate States, should accompany the other property already reverted. I therefore sought this port as a suitable one wherein to "learn the news," and, if I am without a government, to surrender the ship, with her battery, small-arms, machinery, stores, tackle, and apparel complete to Her Majesty's government for such disposition as in its wisdom should be deemed proper.

I have, &c.,
(Signed) JAMES J. WADDELL.

No. 15.

Mr. Adams to the Earl of Clarendon.

LEGATION OF THE UNITED STATES,
London, November 14, 1865. (Received November 14.)

MY LORD: I have the honor to acknowledge the reception of your lordship's note of the 11th instant, announcing to me the fact the Shenandoah had been delivered up by order of the board of admiralty to the United States consul at Liverpool, together with all her stores, &c., as received from her late commander. I had already received the same intelligence from the consul who has taken charge of her under my instructions. I entertain no doubt that the promptness of this proceeding will give great satisfaction to my Government.

But I cannot affect to conceal my disappointment at the manner in which Her Majesty's government have decided to treat the persons who have been engaged in the nefarious transactions perpetrated in that vessel, and especially the chief, a copy of whose letter was received with your lordship's note. A narrative of but a portion of these outrages it has already been my duty to submit to your consideration in a series of
[151] *voluminous papers, the character of which it is impossible to forget. I shall carefully abstain from any unauthorized word of mine which might tend to make a situation already much too grave still more serious.

A copy of your lordship's letter, together with its inclosure, shall be transmitted by the earliest opportunity to my Government.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

No. 16.

The Earl of Clarendon to Mr. Adams.

FOREIGN OFFICE, *November* 17, 1865.

SIR: Her Majesty's government are glad to find by your letter of the 14th instant that you entertain no doubt that the promptness of the proceeding taken by them for the delivery up of the Shenandoah will give great satisfaction to the Government of the United States.

With respect, however, to the disappointment which you express as to the manner in which the officers and crew of that vessel have been dealt with by Her Majesty's government, after having before them the

voluminous papers with which you had furnished them, showing the character of the proceedings in which they were engaged, I must observe that there was nothing in the depositions and other papers of which you forwarded copies to this office which, even if it had been capable of being substantiated in evidence in this country by deponents present at Liverpool before the crew of the Shenandoah were dispersed, would have tended to show that any capture had been made or attempted by Captain Waddell or his crew after, and with notice of, the termination of the war; and I must further observe that even if the case had been otherwise, those papers would not have been receivable as evidence before any magistrate, and that unless some material facts could have been deposed to by one or more witnesses present in this country, no magistrate could have kept any persons in custody upon any charge founded upon the statements in those papers.

I may add that, if any evidence in support of a charge of piracy had been forthcoming, it was quite as competent for any officer or agent of the Government of the United States, or even of any private person, to have taken the necessary proceedings before a magistrate, as it was for Her Majesty's government to do so.

I am, &c.,

(Signed) CLARENDON.

No. 17.

The Earl of Clarendon to Mr. Adams.

FOREIGN OFFICE, *November* 18, 1865.

SIR: I have now the honor to reply to the letter which you addressed to my predecessor on the 21st of October last, respecting the proceedings of the late confederate steamer Shenandoah in the Pacific.

But I must, in the first instance, observe that in alluding to the answer given to you by Earl Russell on the 26th of September, 1864, respecting the conduct of the yacht Deerhound in rescuing from the sea a portion of the crew of the confederate steamer Alabama after her conflict with the United States cruiser Kearsarge, you omit to notice the principal passage in that answer, in which Lord Russell says, "In point of fact, however, Her Majesty's government have no lawful power to arrest and deliver up the persons in question," (that is, the persons rescued from the sinking Alabama.) "They have been guilty of no offense against the laws of England, and they have committed no act which could bring them within the provisions of the treaty between Great Britain and the United States for the mutual surrender of offenders; and Her Majesty's government are, therefore, entirely without any legal means by which, even if they wished to do so, they could comply with your above-mentioned demand," (namely, that those officers and men should now be delivered up to the Government of the United States as escaped prisoners of war.)

I may add that, if beyond the limits of British territory the commander of the Deerhound had improperly interfered to protect the officers and crew of the Alabama from the belligerent rights of the
[152] United States, it was for the commander of the *Kearsarge to use the means in his power for the prevention of such interference. Once upon British soil, they were entitled to the protection of British laws, which they had in no respect violated; and Her Majesty's government could not deprive them of that protection because of the

possibility (whether afterward realized or not) that they might again leave this country and become engaged in further hostilities with the United States. The demand for their delivery up, which was made by you, was, in fact, identical with one which had at various times been made by foreign governments for the extradition or expulsion of other foreign refugees—Poles, Hungarians, and others; and to which the invariable answer had been that the laws of this country did not empower the government to take any such measure. The answer to every such demand is found in the fundamental institutions of this country, in the law of *habeas corpus*, and of trial by jury. If any evidence had been offered to Her Majesty's government identifying any of those persons as British subjects, who had unlawfully enlisted in the service of the Confederate States, or who were guilty of any other violation of our laws, they would have been duly prosecuted; but no such evidence was brought forward.

The case of the Deerhound, therefore, furnishes, when examined, no materials for complaint against Her Majesty's government.

The next subject of complaint preferred by you is the conduct of Her Majesty's government in not preventing the vessel called the Sea King from leaving the shores of England to join another vessel called the Laurel, which was sent to meet her near Madeira with arms and ammunition.

You do not affirm that Her Majesty's government had any power or jurisdiction over either of these vessels when beyond the limits of British territory; but, unless that assertion be made or implied, the complaint falls to the ground. For, while these vessels were in British waters, no information was given (much less was any evidence offered) to Her Majesty's government to show that any persons concerned in their outfit or equipment were guilty of, or were contemplating, any infringement of the "foreign-enlistment act," or of any other law in force in the United Kingdom, nor even that they were suspected of being engaged in any design whatever, hostile or dangerous to the United States.

Your complaint, indeed, is against the general laws of this country. The executive power of the British Crown does not, nor does the executive power (as the act of Congress of 1818 is understood in this country) of the United States, extend to the detention and seizure of an unarmed merchant-vessel, on the mere suspicion that she will or may be armed at sea in the waters of a foreign power.

Under the municipal law of this country (which goes at least as far as any obligation which may be supposed to attach to it under the law of nations) the British government is able to detain and prosecute natural-born British subjects who may enter into the war-service of a foreign power without the license of the Crown, or who within Her Majesty's dominions may fit out, arm, or equip, (or attempt to fit out, arm, or equip,) vessels to cruise or commit hostilities against any state in amity with Her Majesty. But the British laws do not and cannot effectually reach subjects of Her Majesty who may go to a foreign state, and there enter into any kind of naval or military service. You are well aware that many subjects of Her Majesty have gone from this country to the United States, and have there, during the present war, entered into the military service of the United States, and fought against the armies of the confederates, contrary to Her Majesty's proclamation.

Such occurrences as these, the law of England (and, Her Majesty's government believe, the law of the United States) cannot prevent, and has very rarely the power to punish. It is obvious (as you indeed ad-

mit) that the law which prohibits the equipment of vessels destined to make war on states with which Her Majesty is at peace, may, like most other human laws, be evaded. No human means can in all cases effectually prevent individuals from purchasing or otherwise acquiring a vessel with the secret intention of arming her beyond the territorial limits of the country, and then cruising against a state with whom Her Majesty is at peace, or from successfully executing that intention. It is distinctly denied that the government of any state is, upon any recognized principle of international law, responsible for such an event.

Feeling, as it would seem, that for the equipment and armament of the Shenandoah no original responsibility can reasonably be cast on Her Majesty's government, you represent as the main substance of this part of your complaint, that this vessel, after she had been equipped and commissioned, was recognized by Her Majesty's government as a public ship of war of a lawful belligerent, and was admitted as such into British ports.

This is in truth nothing more than the often-repeated objection to the course adopted by Her Majesty's government, in recognizing both parties in the late war as belligerents, and (if belligerents at all) thenas belligerents wherever they were found actually carrying
[153] *on war, whether by sea or by land. You are of course aware that the Sea King was transferred, when beyond the territory of Her Majesty, to the agents of the Confederate States, and from them (while still beyond Her Majesty's territory) received a commission as a ship of war, under the name of the Shenandoah. It was a necessary consequence of the principle of neutrality, and of the recognition of the state of war (by virtue of which alone the blockade was enforced with so much severity against neutrals by the United States) that the validity, for the purposes of the war, of such a commission should be recognized by the government of this country.

The supplies given to this vessel, and the hospitality afforded to her in a British port during the continuance of the war, were merely the same which were always afforded to the vessels of war of the United States; to refuse them, in such a case, would have been not to vindicate, but to depart from the neutrality declared by Her Majesty. If the fact were (as you suggest) that the supplies so afforded had the effect of enabling the Shenandoah to continue hostilities after the Confederate States had ceased to be belligerents, it is obvious that such an occurrence might equally take place in any other case, in which a ship of war of any belligerent nation, having taken in ordinary supplies at a neutral port, might continue hostilities after the restoration of peace, either through ignorance of that fact or from any less excusable motive.

So far, then, as your objection to the enjoyment of belligerent rights by the Shenandoah in the ports of Great Britain is founded on the allegation of her original illegal equipment, I have already sufficiently pointed out that the circumstances of her equipment were not such as in the eye of the English law, or consequently in the view of the English government, could be regarded as illegal. She was, therefore, as long as the war subsisted naturally treated on the same footing as any other vessel of a recognized belligerent power.

But even had the case been otherwise, and had her equipment and origin been undoubtedly illegal, I should have experienced hardly less surprise at the claim put forward on behalf of the United States in the following sentence of your dispatch:

> In consenting to receive the vessel after the facts of its illegal origin and outfit had been satisfactorily established, I cannot resist the conviction that Her Majesty's government assumed a responsibility for all the damage which it has done.

If I needed (which in this case I do not) to find an answer to a claim founded upon such principles, I should have to seek no further than the records of recent American law and the practice of modern American statesmen. In that chapter of American history which has lately become familiar in these discussions, relating to the transactions which arose out of the revolt of the South American republics, will be found a complete refutation from American authorities of the doctrine on which you now appear to insist.

As you are well aware, numerous vessels of war were fitted and refitted under the commission of the revolted states in the ports of the United States to cruise against the commerce of Spain and Portugal. These vessels started on their original voyage, manned and armed in the ports, and by the subjects, of the United States, and returned to the same ports over and over again, after repeated cruises. Though the fact of the illegal origin and equipment of such vessels was established, not by vague surmise or *ex parte* statement, but (in several instances) by judicial proof adduced in suits instituted for the restoration of their prizes when brought within the neutral jurisdiction, the Government of the United States does not appear ever to have taken any step for the purpose of excluding any of those vessels from the full and unrestricted enjoyment, within their own ports or elsewhere, of the same rights (with the single exception of the right to retain prizes brought in) which it accorded to any other ships of war of a belligerent power.

Nevertheless, so far from admitting that by such conduct, as you now contend, they "assumed a responsibility for all the damage done" by such vessels, your Government distinctly repudiated any such responsibility when urged upon them by arguments almost identical with those on which you now rely.

While admitting that several prosecutions have been instituted by Her Majesty's government against persons amenable to British law, who had been shown by probable evidence to have been guilty of violating the foreign-enlistment act, (Captain Corbett, of the Sea King, to whom you refer as having never been brought to trial, is awaiting his trial at the present moment), you make it, nevertheless, matter of complaint that no legal proceedings have been taken against any of the confederate agents in this country, under whose direction and management various operations, in abuse of Her Majesty's neutrality, are said to have been conducted.

But no information, supported by evidence on which a prosecution could be judiciously instituted or successfully maintained, has
[154] ever been laid before Her Majesty's government *for the purpose of showing that the laws of this country were, in fact, so violated by any of those persons.

You are well aware of the extent to which not only municipal, but also international, law permits either of two belligerents to avail themselves of the resources of a neutral country, by mercantile agencies, by loans of money, and by the purchase and shipment of every kind of munitions of war, without giving to the other belligerent any cause of complaint against the country where such operations are carried on. Full advantage has been taken of this state of international law by the United States themselves during the recent contest.

If, in addition to operations of this nature, the confederate agents in this country superintended or directed other designs involving the violation of our laws, they were careful (as it might be expected they would be) to keep their participation in any such illegal acts as far as possible out of sight. The agency of Captain Bullock for the confederate gov-

ernment was, indeed, to some extent disclosed by parts of the evidence relating to ships which were the subject of actual or contemplated proceedings by Her Majesty's government, but not in such a manner nor to such an extent as to make it probable, in the judgment of Her Majesty's advisers, that if proceedings had been instituted against him personally they would have been attended with a successful result.

You refer, indeed, to the recent transmission, under the orders of Her Majesty's government, of Captain Bullock's letter to the commander of the Shenandoah, directing him to cease from the further prosecution of hostilities, as proof that Her Majesty's government have, at least in one instance, considered themselves to be in possession of sufficient evidence of Captain Bullock's authority to control or prevent such hostilities. But it is not clear that proof, even of the extent and kind of authority assumed in that letter, over the Shenandoah when at sea, would have supplied the want of further evidence of any infringement, alleged to have been committed by Captain Bullock, of the laws of this country. Your surprise, however, on hearing of that circumstance, as well as the inference which you draw from it, of the previous possession of evidence against Captain Bullock by Her Majesty's government, will, I hope, cease, when you learn that this letter was transmitted by Her Majesty's government in compliance with the request of Mr. Mason (the known accredited agent in Europe of the Confederate States) made to Earl Russell in a letter dated the 20th June last, after the conclusion of the war.

Whatever might have been the extent of the previous knowledge or ignorance of Her Majesty's government with respect to the acts of Captain Bullock, they were entitled to believe, on Mr. Mason's authority, that the letter sent by him for transmission would be effectual for its intended purpose; in which, being a purpose of humanity, especially beneficial to the United States, Her Majesty's government felt they might safely endeavor so far to co-operate, without any risk of being misunderstood by the United States Government.

I am, &c.,
(Signed) CLARENDON.

No. 18.

Mr. Adams to the Earl of Clarendon.

LEGATION OF THE UNITED STATES,
London, November 18, 1865. (Received November 18.)

MY LORD: I have the honor to acknowledge the reception of a note from your predecessor, the Right Honorable Earl Russell, dated the 2d instant, in reply to one which I addressed to him on the 18th of September last, on certain important questions now under consideration between Her Majesty's government and that which I have the honor to represent.

It is with the most profound regret that I am thus compelled to open my relations with your lordship in a spirit of controversy. I can only urge in extenuation of this proceeding the great importance of the subjects under consideration, not simply as between two countries, but from their wider bearing on the future relations of all the civilized nations on the globe. Furthermore, I flatter myself that, from the contraction necessarily going on of the topics under treatment, we may,

before long, arrive at some sort of termination of a discussion, already, on my part, I fear, rather tediously protracted.

His lordship's note appears to be substantially confined to the consideration of two classes of facts, both of them bearing upon the establishment of one general principle of the law of nations, to wit, the obligation of a neutral country to belligerents to do everything within its power to maintain its neutrality inviolate. This obligation his
[155] lordship *appears to maintain to be fully acquitted by the adoption of such measures as the neutral itself may judge sufficient, without regard to any remonstrances of the belligerent. And, without entering into argument on the abstract question, he contents himself with vouching in the conduct of the United States in past cases, in full justification of the course taken by Great Britain, and complained of by the United States in the progress of the late war. The chief of the cases relied upon by his lordship is that in regard to certain claims for indemnity for the injuries done to the commerce of Portugal by vessels illegally fitted out in the United States.

In order to define the nature of the question thus raised, it would seem to be proper first to note how far his lordship and I are agreed; after which it may be made more clearly to appear wherein we are so unfortunate as to differ.

By consenting to cite the language and the action of the United States Government in the Portuguese case so freely as his lordship does, as a precedent to justify the later course of Her Majesty's government now drawn into question, it is obvious that he must have given to them the high sanction of his approbation.

On my side I have already, in a preceding note, expressed it as my opinion that the grounds taken in that case by my Government were impregnable.

It necessarily follows that, on this point, we are fully agreed. Where there is no difference it is obviously superfluous to continue an argument.

Here I would beg permission to observe that, in all the previous examination of this topic, I have carefully abstained from the task of affirming that a neutral power is absolutely responsible for the injurious consequences of any and every violation of neutrality that may originate within its territorial limits, without regard to the circumstances attending each case. The proposition which I have affirmed, and still do continue to insist upon, is, that a neutral is responsible for all injuries which may so ensue to a friendly nation when it fails to exercise all the means in its power for prevention, and constitutes itself the sole judge of the extent to which it will refuse to resort to stronger ones within its reach when the old ones are proved by the injured party to have been wholly inadequate to the emergency.

With the light shed by this explanation, I now propose very briefly to set forth those points in the respective action of the United States toward Portugal and of Great Britain toward the United States wherein they appear to me to differ so essentially and radically as to make it impossible to bring them within a reasonable parallel:

1. The United States did not recognize the insurgents in South America as a belligerent until the fact of the presence of their armed vessels was made patent to them on the ocean.

But Great Britain did erect the insurgents in the United States into a belligerent before they showed a vessel on the sea, before they organized an army on land, and before they had done a thing but declare an intention to do what they never subsequently executed.

2. Upon the first notice given to the Government of the United States that the neutrality of their ports was violated by South American insurgents making outfits in connection with their own citizens, they immediately put in force the provisions of the existing law; prosecutions were instituted against the foreign agents, as well as citizens; and decrees of restitution were obtained from the judicial tribunals in the cases of captured property. In other words, nothing was left undone that energy could do to bring to bear existing preventive legislation against these offenders.

One particular instance of the desire to perform these obligations is worthy to be presented to your notice, more particularly inasmuch as it incidentally explains as well the public sense of the extent of the obligation of a neutral power in similar cases as of the responsibility entailed from an insufficient performance of it.

It appears that some of the insurgent emissaries, in conjunction with desperate adventurers of the United States, went to the extent of seizing and occupying two different spots on the American coast, neither of them within the recognized jurisdiction of the Union, nor yet within that of any responsible power. Here they made bases from which to conduct their hostile operations against the commerce of Spain and Portugal, very much in the manner, but not nearly with so much success, as Liverpool, in this kingdom, and the port of Nassau were made bases of, against the commerce of the United States, by insurgent emissaries during the late war. These proceedings soon attracted the attention of the President, who dwelt upon the necessity of adopting prompt measures of prevention in his annual recommendations to Congress in the year 1817. The matter was referred in course to the consideration of a committee of the House of Representatives, which made a report recommending that these establishments should be at once suppressed by force, if necessary.

[156] *Among the reasons given for resorting to this summary proceeding are the following, to which I ask a moment of your lordship's attention:

> The immediate tendency of suffering such armaments, in defiance of our laws, would have been to embroil the United States with all the nations whose commerce with our country was suffering under these depredations; and, if not checked by all the means in the power of the Government, would have authorized claims from the subjects of foreign governments for indemnities at the expense of this nation for captures by our people in vessels fitted out in our ports, and, as could not fail of being alleged, countenanced by the very neglect of the necessary means of suppressing them.

It would be difficult to express in more forcible language the principle established by the law of nations than is done in these sentences. The action recommended was, moreover, performed so promptly that soon afterward the President, in a special message, was enabled to announce that the piratical establishments at Amelia Island and at Galveston had been suppressed. The paramount necessity had been thought to justify the exercise of power even over territory not within the national jurisdiction.

But when I turn my attention to the proceedings of Her Majesty's government as they are noted in the dreary list of my representations and complaints contained in the printed memorandum furnished to me with his lordship's note of the 2d instant; when I perceive real justice to have been so seldom done and so often defeated, however good the intentions may have been; when I note the omission of all reference to the endless remonstrances made by myself against the establishment of a naval bureau in Liverpool, conducted by insurgents mentioned and particularized by name, because not a single step was ever taken either

to prevent their action or to punish them, I cannot but be sensible of a difference in the preventive action of the two countries in similar circumstances, which would ever forbid me from classing them together in one connection for a single moment.

3. It is not, however, denied that, in the one case as in the other, several cases of illegal outfits took place which the existing laws proved inefficient to prevent or punish.

In that of the United States the representative of the aggrieved power made at once a direct appeal to the Government, stating the cause of the difficulty, and soliciting a new movement for the purpose of obtaining from the requisite source stronger powers of prevention, to which that Government immediately responded by recognizing the justice of the complaint and at once adopting the suggestion.

If Her Majesty's government has at any time in this struggle followed that example, it has escaped my observation. I should be glad to be corrected when I affirm that it has done the directly opposite thing.

Here I may be permitted for a moment to refer to a passage of his lordship's note, which appears to have been called out by a hypothetical description I ventured to give of the consequences that might ensue to the world if neutral nations constituted themselves the sole judges of the degree in which they had done their duty under a code of their own making. To this phrase his lordship is pleased to retort as follows: "Yet, as far as I can judge, your Secretaries of State always maintained that the United States, as a neutral power, were the sole judges of the degree in which it had done its duty under a code of its own making."

To which I would beg permission to observe that his lordship can scarcely presume me to maintain that, in the literal sense, my country does not make its own code of laws. What I did mean to do was to distinguish by this term a country which was ready to accept suggestions from foreign powers, for an improvement of a code designed to give them the protection they are entitled to by treaties as well as international law, from one which determined to abide by its own system without regard to external representations. By keeping in mind this distinction in connection with the facts already stated of the action of my Government, it will then appear that his lordship is in error when he declares that "our Secretaries of State" (meaning those of the United States) "made themselves the sole judges of the degree in which the country had done its duty under a code of their own making." So far was this from being true that they admitted that the country had not done its full duty, and they proceeded to amend the code at the suggestion of a foreign power that claimed to be aggrieved. Hence it is that the "code" was "not of their own making."

If there be a shadow of doubt left on this point, I will proceed to disperse it by the following extracts.

On the 20th of December, 1816, M. Correa de Serra addresses these words to the Secretary of State:

I apply, therefore, to this Government, in the present instance, not to raise altercations, or to require satisfaction which the Constitution of the United States has
[157] not, *perhaps, enabled them to give, but because I know that the supreme Executive of this nation, all-powerful when supported by law, is constitutionally inactive when unsupported by law. What I solicit of him is, the proposition to Congress of such provisions by law as will prevent such attempts for the future.

To which application Mr. Monroe, then Secretary of State, replies as follows on the 27th of December, 1816:

I have communicated your letter to the President, and have now the honor to transmit to you a copy of a message which he has addressed to Congress on the subject, with a view to obtain such an extension, by law, of the executive power, as will

be necessary to preserve the strict neutrality of the United States in the existing war between Spain and the Spanish colonies, and effectually to guard against the danger in regard to the vessels of your sovereign, which you have anticipated.

And on the 13th of March, Mr. Rush, then Acting Secretary, writes to him as follows:

The act of Congress passed on the 3d of this month, to preserve more effectually the neutral relations of the United States, being upon the subject brought under consideration in your letter to this Department of the 20th of December last, I have the honor, by direction of the President, to transmit for your information the inclosed copy of it.

The President feels sure that your sovereign will perceive in the spirit and scope of its provisions, a distinguished proof of the desire which animates this nation to maintain with his dominions and subjects the most harmonious relations.

But when I turn to the other side of the picture and view the action which Her Majesty's government has thought it proper to take in answer to similar representations made by me on behalf of my government; when I observe that the appeals to the existing law have been almost uniformly of a kind to prove its utter inefficacy; and when, upon my making representations as to the expediency of further legislation to enlarge the powers of the government to an extent adequate to the emergency, I find that proposal positively declined, it seems to me that here again the parallel sought to be made utterly fails.

I would respectfully ask whether in the correspondence just laid before your lordship, there be any language similar to that which his lordship, in one of the notes which he did me the honor to address me, used to me:

Surely we are not bound to go on making new laws *ad infinitum*, because new occasions arise.

Here I would respectfully submit that if his lordship be right in his assertion that new laws *ad infinitum* are not required by new occasions, it is difficult to explain the reason for the existence of so many legislative bodies and such multiplied statute-books. Surely the Government which I represent would not have so repeatedly acceded to the solicitations of Her Majesty's government as it has done, to "make new laws for new occasions," under any other plea.

But I am in candor bound to observe that, even in this doctrine, there has been during the late struggle a singular variation in the practice of Her Majesty's government, which I ask your lordship's permission to point out.

At a very early date the exposed nature of the frontier bordering upon Canada became so much a subject of anxiety to my Government that I was instructed to bring the matter to the attention of his lordship, with a view to the establishment of more effective preventive measures on the Canadian side than were thought to be then within reach. To that end, in the early part of December, 1863, in a conversation which I had the honor to hold with his lordship, after explaining the reasons of my Government for the danger apprehended in this quarter, I proceeded to propose the adoption of a form of law on the part of Canada resembling that which had been enacted on our part in 1838 to meet a similar emergency then happening there. It is true that for a considerable period I had no reason to presume that this proposal had been more favorably received than any other of the same kind I had been called to make. But when, one year later, information was received of the extreme peril into which Canada had been thrown by the violent enterprise executed by some of the insurgents established in that province, upon the peaceful town of Saint Albans, I then had the satisfaction of learning from his lordship that the suggestion had been

adopted so far as that Her Majesty's government had recommended to the authorities of Canada to procure the enactment of the suggested law.

In this case, then, it is clear that the imminent danger of a rupture between the two countries had brought on an acknowledgment of the necessity of going on to "make a new law to meet a new occasion." But surely Her Majesty's government would not be willing to give even a color to an inference that nothing but a necessity to avoid a [158] war would be a *sufficient motive to induce it to recognize an obligation to make a new law. If the reasons for suggestion were equally valid in all cases, I fail to perceive upon what principle the nature of the answer should be made to depend upon the merely accidental pressure of the circumstances attending the moment when it was made.

Without pressing this topic further, I would then beg to observe, that in any event, however the facts attending the Portuguese claim as now explained may be viewed, one thing is indisputable, and that is, that there is a wide divergency in the nature of the two cases sought to be brought together. It is plain that neither in the commencement nor in the proceedings under the existing laws, nor yet in the mode of treating the suggestion of new legislation, was there any resemblance whatever in the tone of the action of the respective governments. Hence I am constrained to arrive at the conclusion that whatever might be thought of the conduct of the Government of the United States in its relations toward Portugal, there is no parallel to it in that of Great Britain toward the United States, by which the latter may be tested in the way of justification. Considered as a precedent, for which alone the case seems to have been quoted by his lordship, I must insist that the evidence entirely fails to establish its authority.

On a general review of these marked differences, considered in the light of the rule of international law laid down at the outset of this letter, it may now be said that one government appears to have done all that it was reasonably asked to do, and that it could do, to preserve its neutrality, while the other certainly could have done more, but deliberately refused, and accepted the responsibility of that refusal.

Hence, I must respectfully submit that before his lordship concludes to adopt the language used by the United States in answer to Portugal, he should be prepared with proof to show that he has likewise adopted the action on which they based it.

I should here gladly close my portion of this long controversy if it were not that his lordship has, in his note to which I now have the honor to reply, thought fit to open a new matter which I cannot decline to notice.

It has happened in the course of this extended discussion that he has, on more than one occasion, deigned to give me the fruits of his examination of various points of history in my own country. In the first instance, his lordship was pleased to apprise me that Spain had never received any compensation for the claims of her citizens against the United States. By the aid of a little light I think I succeeded in dispersing that illusion, so that it has not been made to appear again. Again, his lordship was pleased to inform me that the enlistment acts of the respective countries were in their main provisions similar and co-extensive. Here I respectfully pointed out to his attention the fact that certain important provisions were contained in the one that were not to be found in the other; provisions which we, at least, regarded as having proved in practice the most efficient in the whole law.

His lordship, in the note to which I am now replying, has been kind enough to take notice of this difference, and goes on to describe the nature of the provisions he had overlooked; but it appears to be only for the purpose of trying to convince me that in my statement of their superior efficacy I am utterly wrong. Hence, the argument seems to follow somewhat after this fashion: his lordship having proved to his satisfaction that those provisions of the law which Her Majesty's government did not adopt were as susceptible of evasion as all the others which it did adopt, it must necessarily follow that Her Majesty's government were fully justified in declining a proposal to make any amendment whatever of its existing statute.

To which I would respectfully venture to reply that, even had the result proved to be as supposed, yet the position of Her Majesty's government, if it had consented to make the experiment, would have been, at least to my eye, infinitely stronger than it is now. It might then have replied to all complaints, as the United States replied to Portugal, that everything in its power had been done, even to the extent desired by the complaining party. Whereas, by a refusal to recognize the justice of the request, it appears to have placed itself in the attitude of a party deliberately assuming the responsibility of declining to use those powers legitimately within its reach, wherewith to fulfill its most imperative obligations.

But I am constrained to go further, and affirm that I can by no means subscribe to the opinion which his lordship is pleased to express as to the ineffective nature of the provisions of the law to which he has referred. It is not without extreme surprise that I find him use the precise language respecting it which I beg permission here to quote:

> Now I contend, first, that for ten years these provisions proved utterly inefficacious to prevent the fitting out of privateers at Baltimore, as shown by the fact that the complaints of the Portuguese minister of captures and plundering by American [159] privateers were more *frequent, and extended to a larger amount of property, after 1818, than they had done from 1816 to 1818.

It is difficult for me to describe the high degree of astonishment with which I have read these lines.

In opposition to this grave affirmation of facts, which I must beg leave to observe no attempt is made to sustain by any distinct evidence, I am driven to take the liberty to affirm on my own side, first, that there is not a tittle of specification to show that the fitting out of privateers continued in any appreciable sense for ten years after the year 1818; and secondly, that no pretense of that kind is to be found in any of the official remonstrances of the representatives of Portugal to which I have had access, with one single exception, which I propose presently to notice.

In relation to the point of the efficiency of the law, I shall venture, in opposition to his lordship's reasoning as to what it might be, to confront that which, in the mind of M. Correa de Serra, the person through whom all the transactions passed during much the larger part of the period in question, and who had every opportunity to be familiar with them, it really was.

On the 4th of February, 1819, about two years after it had gone into operation, he deliberately used the following language:

> This law, so honorable to the spirit of justice of the Government that enacted it, has also been found in practice the most useful of the laws existing on this subject. Unhappily the continuance and recent aggravations of the evil it was intended to remedy seem to render it necessary that this law may still continue in force for some time.
>
> I apply, therefore, to this Government in order to obtain the continuance of this law, so necessary to the peaceful trade of the subjects of my sovereign, and so honorable to

the character of the United States, perfectly confident that my request is according to the just and friendly intentions of the Chief Magistrate and legislators of the Union, and conducive to the consolidation of good harmony between my sovereign and the United States.

On the 4th of June, 1820, he again writes to the Secretary of State as follows, thanking him for still more effective legislation:

Permit me, sir, to profit of this occasion to offer my thanks to this Government for the law that prohibits the entrance of privateers in the most important ports of the Union, and for the other that declares piracy the landing and committing outrages ashore in foreign lands. I acknowledge the salutary influence of the Executive in obtaining these ameliorations.

Notwithstanding the very great deference with which it is my desire, as well as my habit, to bow to the judgment of his lordship, if I find myself so unfortunate as to be constrained to express an humble opinion in this case of conflicting authority, I cannot in candor disguise my conviction that the correct view is most likely to be that of M. Correa de Serra.

But however efficient this law may have been found to be by M. Correa de Serra at so late a date as the 4th June, 1820, it is now gravely affirmed that it so wholly lost its efficacy for the ten years following that more property was captured after 1818 than before, and the complaints of the Portuguese minister for these captures and plundering were more frequent than ever.

The natural corollary, should this statement be sustained, would be that, assuming the exertions of the Government to have continued the same, instead of improving the efficacy of the old law, the addition of the new provisions must have only made it more worthless than it was before, upon which logic might doubtless be based a very good justification to Her Majesty's government for declining to try further legislation altogether. But, unfortunately, the whole argument falls to the ground when its base disappears. It is not denied that some outfits escaped from Baltimore after the year 1818; but it is denied that the complaints made for captures after that time bore any fair proportion to those made before. It never has been pretended that any law could be made so perfect, or any vigilance could be so complete, as to put an end to the efforts of profligate and desperate men. The grave error into which his lordship has fallen appears to have originated in an *ex parte* letter written by a minister from Portugal at Washington thirty years after the date of the events; in which letter and the caption of a list embracing the names of vessels captured, he includes them vaguely within two distant dates of 1816 and 1828. It is, however, remarkable that in the letter itself containing his own recapitulation of the facts, no date of a capture is given later than 1820. By turning to the original representations made by his predecessors the same fact distinctly appears. I have carefully examined those representations to trace the dates of the claims embraced in that list, and find much the greater proportion included within the period of residence of M.
[160] Correa de Serra, ending in that year. So *also of the gross amount of value assigned in 1850 as an indemnity for all the damage done during the entire period, which is less than £300,000. I find a great proportion embraced in an early and more trustworthy representation made by the same person.

Such being the facts, I submit whether, with such small support as can be given by this wholly *ex parte* and vague averment, his lordship has not a little crossed the verge of international courtesy, by venturing, without any personal experience whatever of American legislation, and

in the face of the statement of M. Correa de Serra, which he must have read, to hazard an assertion, and, still more, give rise to an impression like that necessarily produced by the language already quoted. Standing as I do, the defender of the law of my country, it is with regret I am compelled to protest against it as wholly unsubstantiated by any facts adduced, and in every essential particular incorrect.

Neither were those the only cases in which the efficacy of these provisions of law have been fully tested. It is not a very long time since I had the honor of calling the attention of Her Majesty's government to an instance of the remarkable promptness with which action was had under them upon a request made by the representative of Her Majesty's government at Washington. When Mr. Crampton, on the 11th of October, 1855, directed the attention of my Government to the character of a vessel in New York then believed by him to be fitting out as a privateer, it was by virtue of the authority vested in it by one of the sections of this law that she was seized on the 19th of the same month, and taken possession of by the officers of the law in such a manner as to prevent all possibility of escape. It required but four days to prosecute the investigation before Her Majesty's representative was led to declare his satisfaction with the result to which it had reached, and desired the process to be stopped. When I compared the celerity of this effective proceeding with the feeble nature of the process that ended in the escape of the Alabama, in defiance of the British authority, while I give due credit to Her Majesty's government for good intentions, it seems difficult to assent to the view which his lordship has been pleased to take of the slight difference in the inefficacy of the legislation of the respective nations. In any event I cannot but think their future harmony would have been much more certainly secured by a consent to try the experiment in season, than by an endeavor, after great injury has been done, to prove that it might not, under any circumstances, have been averted.

But it would appear superfluous to pursue this investigation further in the view of the fact that whether these provisions of the American law were or were not effective, it never was any part of my instructions to urge their adoption upon Her Majesty's government. I was instructed only to suggest the expediency of having recourse to such additional measures as it might think proper to choose to the end of making the laws of Great Britain more effective. And it was in that form only that Her Majesty's government decided to decline the proposal. The decision was not against the adoption of the law of the United States. It was against doing anything at all.

Neither in presenting the argument which I have been called to do, in the course of my duty here, can I for a moment permit an implication that my Government has either "made a demand which aims at the diminution of British freedom, or which assumes, without warrant from any previously recognized authority or practice, the existence of an extent of obligation on the part of neutrals toward belligerents, going beyond any which the government of a free country could have power, though acting with entire good faith, punctually to fulfill."

I feel very sure that my country is quite as jealous of the preservation of the true principles of freedom as Great Britain is, or ever has been, and further, I fully believe that neither government would consent to give to the term that latitude which would encourage the power of doing wrong with perfect impunity.

The suggestion which his lordship has been pleased to make toward the close of his note of improvements in the statutes of both nations, to

the end that greater security may be given to the respective nations against those who endeavor to evade its laws, though it appears to me to be in substance little more than it has been the object of my Government from the outset of the war to obtain, is yet one which I cannot but receive with great respect, and which I shall transmit to my Government with pleasure. If the reasons for it are sound now, I am at a loss to perceive why they did not avail during a period when my country could have felt the benefit of them. I trust that I need not repeat how much pain it has given me heretofore to witness the evil consequences that ensue from the alienation of sentiment that has grown out of this struggle between people of the same race, and how cheerfully I welcome every appearance of a desire to bring them back to harmony. Yet with regard to the proposition immediately before me, I cannot forebear to observe that it is predicated upon an assumption that the legislation of the two countries is now equally inefficacious, which I cannot entertain for a moment. On the contrary, the necessity for *some action in future seems to me to be imperative, because that legislation, as it now stands, is not co-extensive.

[161]

For it is hardly possible for me to imagine that the people of the United States, after the experience they have had of injuries from the imperfection of British legislation, and a refusal to amend it, would be ready cheerfully to respond to another appeal like that made in 1855 by Her Majesty's representative to the more stringent and effective protection extended to their own. The great preservative of harmony between nations is the full recognition of reciprocity in their obligations. So long as the heavy list of depredations upon American commerce, consequent upon the issue of a succession of hostile cruisers, built, fitted out, armed, manned, and navigated from British ports with perfect impunity, continues to weigh upon their minds, it would be the height of assurance in me to hold out any encouragement to the acceptance of proposals the practical consequence of which might be to place Great Britain in precisely the same degree of security, in dangerous emergencies, which she herself when applied to had deliberately refused to accord to them.

In regard to the parting words of his lordship's note, I have already too often had occasion to express the sentiments of my Government to leave any doubt of the sense in which I accept them.

In the performance of a duty which has been too often painful, while his lordship has been officially the person to whom it has been my lot to address my representations, I have been steadily cheered by the conviction that he was substantially animated by the feeling that prompted those lines. I have the greatest pleasure in believing that in assuming the duties of his post under his auspices, my country may rest satisfied that the accession of your lordship has brought about no unfavorable change.

I pray, &c.,

(Signed) CHARLES FRANCIS ADAMS.

No. 19.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, November 21, 1865. (Received November 21.)

MY LORD: I have the honor to acknowledge the reception of two notes from your lordship, one of the 17th instant, the other of the 18th

instant, both of them relating to the case of the vessel heretofore known as the Shenandoah.

The arguments presented in these notes appear to me substantially so much the same as have been urged in the correspondence I have heretofore had the honor to conduct with your predecessor, that I deem it unnecessary, on my own responsibility, further to enlarge upon the opposite views already submitted. Regretting that the result has been to bring us no nearer to any agreement in our respective convictions, I shall content myself with transmitting copies of your lordship's notes for the consideration of my Government, and awaiting specific instructions.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

No. 20.

Mr. Adams to the Earl of Clarendon.

LEGATION OF THE UNITED STATES,
London, November 21, 1865. (Received November 21.)

MY LORD: I have the honor to inform your lordship that the notes elicited by the proposal for a commission to consider certain classes of claims growing out of the late difficulties in the United States, made by your predecessor, the Right Honorable Earl Russell, in his letter addressed to me on the 30th of August last, have received the careful consideration of my Government.

Adhering as my Government does to the opinion that the claims it has presented, which his lordship has thought fit at the outset to exclude from consideration, are just and reasonable, I am instructed to say that it sees now no occasion for further delay in giving a full answer to his lordship's proposition.

I am directed therefore to inform your lordship that the proposition of Her Majesty's Government for the creating of a joint commission is respectfully declined.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

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[162] *No. 21.

The Earl of Clarendon to Mr. Adams.

FOREIGN OFFICE, *December* 2, 1865.

SIR: I have the honor to acknowledge the receipt of your letter of the 18th ultimo, having reference to the letter which my predecessor addressed to you on the 3d ultimo.

There are many statements in your letter which I should be prepared to controvert if it were not that Her Majesty's government consider that no advantage can result from prolonging the controversy, of which the topics are generally exhausted, but which might possibly, if continued, produce acrimony into the relations between this country and the United States, two nations who from kindred origin and mutual interest should

desire to be knit together by bonds of the closest friendship. Such a desire is strongly felt by the government and people of this country, and Her Majesty's government do not doubt that it is shared by the Government and people of the United States.

While abstaining therefore from any discussion of the passages in your letter, to the correctness of which I am unable to subscribe, it is nevertheless my duty in closing this correspondence to observe that no armed vessel departed during the war from a British port to cruise against the commerce of the United States, and to maintain that throughout all the difficulties of the civil war by which the United States have lately been distracted, but in the termination of which no nation rejoices more cordially than Great Britain, the British government have steadily and honestly discharged all the duties incumbent on them as a neutral power, and have never deviated from the obligations imposed on them by international laws.

I am, &c.,
(Signed) CLARENDON.

No. 22.

Mr. Seward to Mr. Adams.—(Communicated to the Earl of Clarendon by Mr. Adams, December 20.)

DEPARTMENT OF STATE,
Washington, November 30, 1865.

SIR: I have the honor to acknowledge the receipt of your dispatch of November 15, No. 1091. It is accompanied by several interesting papers. First. A copy of a note which Lord Clarendon addressed to you on the 11th instant, in execution of his promise to communicate more fully concerning the surrender of the Shenandoah, and the disposition of the pirates to be made by Her Majesty's government. Secondly. A copy of a note which appears to have been addressed to Earl Russell on the 6th November instant, by one James J. Waddell, who describes himself as being the commander of what he calls the confederate ship Shenandoah, but which we certainly know to be the British registered ship Sea King. Waddell, in his communication, reports that the brig has now returned to the port of Liverpool, and there placed herself and crew under the protection of Her Majesty's government, having at length desisted from a destructive career, which she pursued indefatigably for a period of ten months, during which, as we well know, he derived all his men and material of war, supplies and provisions, from home and colonial ports within the British empire, in opposition to the earnest and continuous protests of the agents of the United States. Thirdly. Your reply acknowledging the receipt of the note of Lord Clarendon. I lose no time in giving you the views of the President concerning the papers which have thus been brought to his consideration, and the subjects to which they relate.

First. Among those subjects is the delivery of the Shenandoah by direction of Her Majesty's government to the agents of the United States. We accept the vessel, but I regret to say that the acceptance is not attended with any sense of satisfaction on the part of this Government. It would have gratified the President if Her Majesty's government had caused proceedings to be instituted for the condemnation of the Shenandoah. The course, however, which the British government has heretofore pursued in regard to our applications for justice was such as to

discourage on our part an expectation of such a disposition of the vessel. We accept her now simply and exclusively upon the prudential consideration that being reduced into our possession, she will not again depart from British waters in a hostile character.

Secondly. The United States cannot but ask the serious atten-
[163] tion of her Majesty's *government to the facts of the case as they bear upon the discharge of the offender Waddell and his accomplices. After having exposed himself and them to prosecution for piracy in the ports of every civilized nation, he, as it would seem to us, impertinently and indecently placed himself and his associates under the protection of Her Majesty's government under circumstances which, as they are viewed by this Government, are calculated to render a judicial investigation necessary for the safety and welfare of an injured and friendly nation. The United States think that they might well have promptly called upon Her Majesty's government to surrender the offenders as fugitives from justice, to be brought within the jurisdiction of the United States, and punished here for their flagrant crimes.

The United States, however, were not at liberty, consistently with their self-respect, to pursue that course. They could not but recall the fact that in recent cases of the Chesapeake and J. L. Gerety, or Eureka, applications of that character made by the United States were denied by the judicial authority of Great Britain, approved by the executive government, on the ground that the offense of piracy on the high seas was properly cognizable in Her Majesty's courts of the realm, and therefore that the offenders were not lawful subjects of extradition to a foreign government. It therefore only remained to the United States to ask Her Majesty's government themselves to take the measures which seem to be required for the discharge of obligations to the United States and the vindication of public justice. This suggestion was made by you to Lord Clarendon in what seems to us to have been a very respectful and becoming manner. The result which followed was the discharge and unconditional enlargement of the offenders from custody upon two grounds: First, that Her Majesty's government have in their possession no evidence to impeach a prevaricating plea of the commander. This position was assumed when every part of the unlawful transaction complained of had occurred either in British ports or on the decks of the Shenandoah, herself a British vessel, and when all those transactions had been fully made known to Her Majesty's government; and when any parties who could give the necessary testimony for the conviction of the pirates were not only within British jurisdiction, but actually within custody of agents of Her Majesty's government. The other ground which is assigned for the enlargement of the offenders is that none of them were subjects of Great Britain; whereas, upon evidence which seems to this Government entirely conclusive, all the offenders were either native subjects of the Queen, or had become by some sufficient form of refuge or domiciliation amenable equally with native subjects to the penal laws of the realm.

The United States regret that they are unable to draw from these proceedings any other inference than the painful one that Her Majesty's government have assumed to hold guiltless of all crime subjects of Her Majesty who have, in a time of profound peace, waged naval war upon the high seas against unarmed citizens of the United States engaged in lawful commerce and navigation.

As a protest against these proceedings you will read this dispatch to Lord Clarendon, and leave with him a copy if desired.

I am, &c.,

(Signed) WILLIAM H. SEWARD.

No. 23.

The Earl of Clarendon to Sir F. Bruce.

FOREIGN OFFICE, *December* 26, 1865.

SIR: Mr. Adams called upon me by appointment and read and left with me a copy of a dispatch from Mr. Seward respecting the Shenandoah, and the surrender of that ship to the United States authorities.

I inclose a copy of the dispatch.[1]

I told Mr. Adams that my sincere desire to do and say nothing that could impair our friendly relations with the United States alone prevented me from replying to the dispatch at once and in the terms which I thought it deserved, and that if it was answered it would be so in writing. Mr. Adams said that was the course which he expected I should take.

A lengthened discussion then ensued as to the manner in which the obligations of neutrality had been performed by this country during the late civil war. It was conducted without acrimony, and was put an end to by myself, as leading to no useful or practical result.

[164] *I, however, asked Mr. Adams whether it would not be both useful and practical to let by-gones be by-gones, to forget the past, and turn the lessons of experience to account for the future. England and the United States, I said, had each become aware of the defects that existed in international law, and I thought it would greatly redound to the honor of the two principal maritime nations of the world to attempt the improvements in that code which had been proved to be necessary. It was possible, I added, that the wounds inflicted by the war were still too recent, and that the ill will toward England was still too rife to render such an undertaking practicable at the present moment; but it was one which ought to be borne in mind, and that was earnestly desired by Her Majesty's government, as a means of promoting peace and abating the horrors of war, and a work, therefore, which would be worthy of the civilization of our age, and which would entitle the governments which achieved it to the gratitude of mankind.

Mr. Adams, in reply, said the law of England, in its international application, stood greatly in need of amendment; but he gave me no encouragement to expect that his Government would co-operate with that of Her Majesty in the course of proceeding which I had suggested.

You will, however, avail yourself of such opportunities as you may think fitting to bring the subject under the consideration of Mr. Seward or the President, and you can neither exaggerate the importance attached to it by Her Majesty's government or the satisfaction it would give them to co-operate with the Government of the United States in a work of which the benefit would be universal.

I am, &c.,
(Signed) CLARENDON.

No. 24.

Mr. Adams to the Earl of Clarendon.

LEGATION OF THE UNITED STATES,
London, December 28, 1865. (Received December 28.)

MY LORD: Entertaining no desire to re-open the questions already discussed in connection with the steamer Shenandoah, I propose to

[1] No. 22.

submit the accompanying letter from the consul of the United States at Liverpool and the two depositions to which it refers, solely for the purpose of placing more fully on the record what appear to be the facts connected with her cruise.

The points to which I desire particularly to call your lordship's attention are these:

1. In your note to me of the 2d instant you state "that no armed vessel departed during this war from a British port to cruise against the commerce of the United States."

2. In your note of the 11th of November your lordship is pleased to rely on the authority of the commander of the Shenandoah for the statement that he committed no depredations upon the commerce of the United States after he knew that the rebellion had been suppressed.

3. In the same note you state, on the authority of the report of the officer sent to muster the crew, that there were no persons known to be British subjects on board.

On the other hand, with the aid of the narrative and list of the crew herewith submitted, I trust it may be made to appear—

1. That the Sea King did depart from a British port armed with all the means she ever had occasion to use in the course of her cruise against the commerce of the United States, and that no inconsiderable portion of her hostile career was passed while she was still registered as a British vessel, with a British owner, on the official records of the kingdom.

2. That the commander had been made fully aware of the suppression of the rebellion on the very day before he committed a series of outrages on innocent, industrious, and unarmed citizens of the United States in the Sea of Okhotsk.

3. The list of the crew herewith submitted, with all the particulars attending the sources from which the persons were drawn, is believed to be so far substantially correct as to set at rest the pretense of the officer sent on board that there were no British subjects belonging to the vessel.

Deeming it to be of the utmost importance to the establishment of the precise relations of neutral powers toward belligerents in future emergencies that all the facts attending the share taken by Her Britannic Majesty's subjects in the late war should be clearly placed before
[165] the world, I have ventured to take the liberty to ask of your *lordship the privilege to consider these papers as intended to modify, so far as they may be fairly entitled to be regarded as doing so, the allegations of fact which appear in the notes to which they respectively refer.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[Inclosure 1 in No. 24.]

Mr. Dudley to Mr. Adams.

UNITED STATES CONSULATE,
Liverpool, December 18, 1865.

SIR: I have the honor to inclose you copies of two affidavits: one of William A. Temple, a very intelligent seaman, who shipped on the Shenandoah, (then called the Sea King,) in London, and remained on her during the cruise, and was discharged from her after she came to this port; the other that of Margaret Marshall, the wife of David Marshall, of Liverpool, who went out from here in the steamer Laurel, and joined the

Shenandoah near the island of Maderia in the capacity of a fireman. David Marshal was also on the Shenandoah during the whole of her cruise. At the time of his enlistl ing they gave him what is known as a half-pay note, for the one-half part of his wages, payable to his wife at the office of Fraser, Trenholm & Co., in Liverpool. This note was sent to Mrs. Marshall by her husband; it was for £3 10s. per month. Her affidavit shows that this money was paid to her at the office of Fraser, Trenholm & Co., Liverpool, monthly, during the cruise of the vessel, up to the month of October, 1865. That the last payment was made to her on the 18th day of October last.

The affidavit of Temple covers the time of the whole cruise, and gives an account of some of the events that occurred, with a list of the officers and crew, and their nationalities. By it you will see that she had 26 officers, 33 petty officers, 54 seamen, 12 firemen, and 12 marines, making, in all, 137 persons on board. Of these 78 were British subjects, 26 foreigners belonging to other nations, and 33 Americans, divided as follows: Of the officers, 19 Americans and 7 British subjects; of the petty officers, 5 Americans, 23 British subjects, and 5 other foreigners; of the seamen, 9 Americans, 26 British subjects, and 19 other foreigners; of the 12 firemen, all British subjects; of the 12 marines, 10 British subjects, and 2 foreigners of other nations.

Among other matters, the affidavit shows that the Sea King, when she sailed from London, had two 18-pounder guns mounted upon her decks, and that these were the principal guns used during the whole of her cruise; that the day before they reached the island of Madeira they painted over the name of Sea King wherever it appeared on the vessel or any of the boats or fixtures; that on her arrival at Melbourne she was received in the most cordial manner by the officials and people at that port, and every facility afforded to obtain supplies and make repairs; that the officers of the Shenandoah were entertained on shore, and in their turn entertained the officials of Melbourne on board the Shenandoah; that Captain Waddell entertained privately on the Shenandoah the governor of Melbourne; that the government engineer at Melbourne was on the vessel two or three times a-day, and if he did not superintend the repairs that were being made, at least gave them the benefit of his advice; that at the time they left Melbourne they had more than forty persons stowed away on board the vessel, all of whom were enlisted and enrolled upon the ship's articles before they were out of sight of land; that the ship was coaled there by the English ship John Fraser, of Liverpool; that notwithstanding they received information of the surrender of Lee and the termination of the war as early as the month of June of this year, they still went on burning and destroying all vessels they fell in with sailing under the United States flag, and after receiving this information captured no less than nineteen vessels, all of which were either bonded or burned; that the flag generally used on the Shenandoah when speaking other vessels or decoying their victims was the English; that the men received their bounty-money when they enlisted and their wages afterward in English gold; that the contract made with them was that they were to be paid in this money, and be discharged at an English port or placed on board of an English vessel after their several erms of enlistment had expired; that they were brought to the English port of Liverpool and entertained by Captain Whitehead, who sent off a boat-load of fresh provisions to them on the night of their arrival; that Jones & Co. on the following evening also sent off a boat-load of provisions, which the custom-house officers refused to permit to be taken on board; that the officers and crew were all discharged from the ship by Captain Paynter, of Her Majesty's ship Donegal, the crew having been previ-
[166] ously informed that on " their names being called they must give their nationality as southerners; that the crew upon being landed at Liverpool were admitted into the Sailors' Home, and that they were paid there either the whole or part of the wages due to them in money obtained at Liverpool.

I am informed that the Captain Whitehead, who sent off the boat-load of provisions to the Shenandoah on the night of her arrival, is a member of the firm of Whittaker, Whitehead & Co., Liverpool; and that the firm Jones & Co., who sent off the boat-load on the following evening, is the same firm that fitted out the pirate Georgia.

When you add to the facts disclosed in these affidavits those that were known before, that the vessel was built in Scotland; owned at the time she sailed upon her cruise by Richard Wright, an English merchant of Liverpool, in whose name she was registered in London, and who so late as October of this year stood there as her registered owner; that she was fitted out and sailed from London upon her cruise, was armed with English guns and wholly supplied from England, it seems to me that the character of this vessel as an English buccaneer is fully made out.

I am, &c.,
(Signed) THOMAS H. DUDLEY.

[Inclosure 2 in No. 24.]

Affidavit of William A. Temple.[1]

I, William A. Temple, of London, now residing in Liverpool, No. 108, St. James street,

[1] The blanks in this statement were not filled up in the copy forwarded by Mr. Adams.

say I was born in Madras, and am a British subject. In October, 1864, I was in want of a ship, and stopping at Green's Sailors' Home in London, and I heard of the Sea King. I was called in the office by one of the officials. Captain Corbett of the Sea King steamer, afterward called the Shenandoah, was there. I was asked for my discharge by Captain Corbett. I tendered him my papers; he told me he would ship me as an ordinary seaman; he told me he would give me 35s. per month. This was on Wednesday. He told me to be down on the next Friday morning. I signed the articles of the Sea King for a voyage to Bombay, not to exceed two years, Captain Corbett giving me a note for one month's advance wages. I signed in the name of W. J. Jones, and I continued by that name, William John Jones, during all the cruise of the Shenandoah. I went down on Friday, was told she would not go out until next morning, and that I must be on board by 4 o'clock. I went at the time mentioned and found her going out of dock. I got on board; she was in command of Captain Corbett. We proceeded down the river at half speed. At the time we left London we had two eighteen-pounder guns mounted on the decks. These were the guns we generally used while on our cruise in bringing vessels to. I found on board Lieutenant Whittle, who was afterward first lieutenant; he was on her as a cabin passenger under the assumed name of McDonald. There were several parties on board; some of them left us at Deal. Richard Wright, a merchant of Liverpool, who owned the vessel at the time, was one of them. The captain was on very intimate terms with Lieutenant Whittle, treating him with every deference. I became steward to the steerage officers, and remained in this capacity after I enlisted on the Shenandoah until a month after we left Melbourne, and I then went on deck and did duty as an ordinary seamen. We kept down the channel under easy sail and steam, and made the island of Madeira on the following Monday week. At the time we left London the name Sea King was on the stern of the vessel, on each bow, on all the boats, buckets, life-buoys, and other fixtures and furniture. The day before we reached the island of Madeira the name Sea King was either painted over or else scratched off. During that night we kept on and off. Next morning we ran into the harbor, signaled a small steamer lying there, which afterward proved to be the Laurel. We went out of the harbor again; the steamer Laurel followed us. In two hours we reached a small island lying in an easterly direction from Madeira. The steamer Laurel anchored close into the shore, and we came alongside and dropped our anchor. She (the Laurel) soon came alongside and made fast to us. It was now for the first time that I learned what was up, and that she was going privateering. The steamer Laurel was in command of Captain Ramsay, a British subject, who held a commission as first lieutenant in the confederate navy. The first mate, by name of Heasman, came to us and told us about it. He stated that the gentleman Whittle, who came with us, was to be first lieutenant, and told us that any of us who desired to join would get £4 10s. a month. As soon as the two vessels were fastened together they commenced transferring the guns, shot, shells, ammunition, clothing, &c., from the
[167] *Laurel to the Sea King. We worked from about 2 o'clock that day until 3 o'clock the next morning; during this time grog was served out to the men about every two hours. Captain Corbett, Lieutenant Whittle, and the officers and men of both ships, were busy engaged in making the transfer. After we finished we lay down and took a sleep, and turned out again about 9 o'clock. As soon as the men were out we were all called aft by the boatswain of the Sea King; the men from the Laurel were also called on board. As soon as we got aft Captain Corbett came out with the ship's articles in his hands, and made a speech to us something to this effect: "Men of the Sea King, you signed these articles with me to go to Bombay or any intermediate port, and if the ship should be sold on the voyage you were to sign clear of her." Some one said, "We did not hear anything about that in London." He replied, "Here it is," and read it to them. He then went on to say that he had sold the ship, and that those who wished to join the ship could do so; that they would be paid on their signing a paper clearing from the Sea King two months' wages, while those who did not want to join her were to take their clothes and go on the steamer alongside, which would take them to Liverpool, where they would be paid two months' wages upon signing a similar paper. Some of the men demanded that they should be paid immediately. Captain Waddell was standing close to Captain Corbett at the time, in full confederate uniform, and, as soon as Captain Corbett had finished, stepped forward and took his place by the side of Captain Corbett, and said: "Men, I am an officer in the confederate navy, authorized to take command of this ship." He offered to read his commission, but the men said, "No, never mind." He then said, "Any of you that feel inclined to serve under the confederate flag will get good wages and good treatment. I do not intend to fight; any one can see that this vessel was not made to fight. I intend to run away rather than fight, unless in a very urgent case. My orders are simply to destroy the Federal commerce by burning and destroying all ships that I can find sailing under the Federal flag. He said, as each vessel was taken they would be valued, and half of the value of each would be divided among the ship's company and paid to them at the end of the war. Some one asked what bounty he would give. He replied he would give £15 bounty in gold; to able seamen he would give £7 per month,

and those that were married could have their wages paid to their wives, in Liverpool, during the cruise. Notes were given to the married men for the half of their wages, payable in Liverpool, at Messrs. Fraser, Trenholm & Co's office. These notes have been paid, as I have been informed, up to three weeks of our reaching Liverpool in last month. He told the men as the wages were high they would only sign for six months, at the end of which time he would land them in some British port, if it lay in his power; if he could not do this, he would endeavor to place them on board a British vessel bound for the United Kingdom. He expected to make up his crew from the prizes he would take. He said her name was the Shenandoah, and that he was to command her. No confederate flag had, up to this time, been shown. The only flags used had been the English. Myself, Mr. Hutchinson, Mr. Clark, and John Martin signed cleared of the Sea King, receiving each two months' wages from Captain Corbett, and then were sworn to the effect that we were to serve the Confederate States to the best of our ability, and never betray them. We signed this at the bottom. Efforts were made to get the other men to join. Many from the Laurel did join; those who would not returned to Liverpool, or started for there, in the Laurel. Mr. Smith, the purser of the Shenandoah, paid me the two months' wages for serving on the Sea King, also the bounty money for enlisting on her. It was about 12 o'clock when the Laurel left us; she steered toward Madeira, and we took a southwest course. On parting company with the Laurel we hoisted for the first time, on the Shenandoah, the confederate flag. It was up but for a few minutes. Another vessel hove in sight, and we hoisted an English flag to her. She replied with the same flag. This was the 19th day of October, 1864, when we parted with the Laurel. Captain Corbett, and all the men who did not join the Shenandoah, went on the Laurel. We were ten or twelve days in stowing things away and mounting the guns. We had two guns mounted at the time we left London, each eighteen-pounders; we mounted four sixty-eight pounders smooth-bore shell-guns and two long thirty-two pounder Whithworth rifle-guns. These were all English guns. There were also rifles, revolvers, cutlasses, &c., in abundance. Each man at his quarters, during our cruise, was armed with a rifle, a cutlass, and a revolver. This was continued until the 3d of August last. There were but nineteen men beside the officers at the time we left the Laurel. All these men were British subjects. All the guns, small arms, and ammunition, as well as supplies, were from England; had been brought out either from London in the Sea King, or in the English steamer Laurel from Liverpool. Our bounty-money was paid us in English gold.

[168] *Indeed, Captain Waddell told us at the time we joined that our wages would be paid us in English gold. We were paid, at least myself, £2 in English money, at Melbourne, and since my arrival at Liverpool I have been paid by Mr. Lewis Wiggins, who held the post of signal quartermaster on the Shenandoah, about one-half part of my wages. This payment was made at the Sailors' Home, Liverpool, on the 13th November, (last month, 1865,) in English money. This last payment was made by Wiggins and Charles H. Morton, one of the seamen. They told us we need not be afraid, we would get the rest of it.

About the 29th day of October, 1864, we captured our first prize in the bark Alina, of Searsport, from Newport, bound to Bahia. When we got within signaling-distance of her, we hoisted the English flag. She replied by hoisting the American, and as soon as we got up near her we fired a blank shot across her bows, and hoisted the confederate flag. She hove-to, and an armed boat was sent to her. The vessel was condemned and sunk. The captain and men were brought on board the Shenandoah, and all the men and officers, except the captain, were put in irons.

The next prize was the schooner Charter Oak. She was bound from Boston to San Francisco. She was condemned and burned. The captain had his wife and wife's sister on board. They were brought to the Shenandoah. The captain had about 200 dollars. This Captain Waddell took from the captain, but gave it to his wife on leaving the Shenandoah. The captain of the Charter Oak represented that this was all he had in the world now that his vessel was burned. This vessel was loaded with furniture, provisions, preserved fruits, preserved vegetables, meats, &c. We took out sofas, furniture, preserved fruits, meats, &c., and transferred them to the Shenandoah; indeed, we almost unloaded her, and transferred her cargo to our vessel. We spoke a Danish brig bound to Rio Janeiro. All the prisoners were placed on this vessel. Our captain made a bargain with the Danish captain to convey them there.

A week or ten days afterward we took our third prize, the bark D. Godfrey, of Boston, and bound from that port to ———. We condemned and burned her.

We then captured the schooner L. N. Stacey, of Boston, and from that port to Honolulu. She was condemned and burned.

The next vessel we captured was the Kate Prince. She was a ship from Cardiff to Bahia. Her cargo proved to be neutral. She was ransomed, and all our prisoners transferred to her.

Our next prize was the bark Adelaide. She was condemned to be burned; but while they were breaking up her cabin a letter from her owners in Baltimore was discovered. It was brought on board, and the order to burn her was revoked, because she belonged

to southern owners. She was released on giving a ransom-bond for a small amount. She was under a Buenos Ayres flag.

The next prize was a brigantine, the Susan, from Newport to Rio Janeiro, loaded with coal. She was condemned and sunk.

The bark Edward was next captured west of the Cape of Good Hope. She was from Nantucket, and bound on a whaling voyage. We lay aside her for two days, transferring stores from her to our vessel. She was then condemned and burned.

The next day we made the island Tristan d'Acuna, where there is a British settlement. We landed all our prisoners there, to the number of about forty.

The next prize was east of the Cape. It was the bark Delphine. She belonged to Portsmouth, New Hampshire; was in ballast. She was condemned and burned. The captain had his wife with him. She and the rest were transferred to the Shenandoah.

From this time until we arrived in Melbourne, on the 26th day of January, we took no more prizes. We were well received by all the authorities and people at Melbourne. All the officials, and most of the leading inhabitants of the place, visited the Shenandoah, and were very warm in their congratulations and well-wishes to us. The governor of Melbourne visited Captain Waddell, and was privately entertained by Captain Waddell on board the Shenandoah. There were 8,000 visitors came on board to see us in one day. All the government officials were on board to see us, and most of them were entertained on board either by the captain or his officers. The government officials in Melbourne gave an elegant entertainment to Captain Waddell and his officers during his stay there. It was given at their club-room in Melbourne. Every facility was afforded to us, both by the officials and people of Melbourne, to make our repairs and to procure our supplies, indeed, everything we wanted. One very warm friend was a man by the name of —— ——, formerly the United States consul there.

[169] "A dinner was given to the officers of the Shenandoah, at a place called Ballarat, up in the country. Mr. Smith, Mr. Grimball, Mr. Scales, Mr. Mason, Dr. Lenning, and Mr. Brown went. They were received at the station by some 2,000 people, who cheered them as they passed.

The English government engineer was on board our ship while we were undergoing our repairs three or four times a day, and certainly assisted them with his opinions and advice if he did not superintend our repairs.

We left Melbourne on the 18th day of February. When we left we had from fifty to sixty persons on board as stowaways; among them was Captain Robert Blackar, who commanded the English steamer Saxonia. It was known to the officers on board at the time we sailed that most of these men were on board. All these persons so stowed away on board were British subjects, and were enlisted or enrolled upon the ship's books as officers or men within twelve hours from the time we left our anchorage, and while we were within sight of land. Their names are mentioned in the list annexed hereto, and comprise all those set down in said list as shipping at Melbourne.

Before we left Melbourne we were coaled by the ship John Fraser, from Liverpool, which I have since learned was sent out with coal expressly for us. It was some six weeks after we left Melbourne before we took another prize, during which time we were organizing a company of marines and drilling the crew.

About the 2d of March we spoke the schooner Honolulu, under the Honolulu flag; the captain of the schooner told us there were six American whalers anchored in the harbor of the island of Ascension. We made all haste, steered directly to this island, and entered the harbor two days after. We found there four vessels, all whalers: the ship Hector, of New Bedford; ship Edward Carey, of San Francisco; the bark Pearl, of New London; and the bark Harvest, of Honolulu. This last vessel was from Honolulu, under the Honolulu flag, and in command of a citizen of Honolulu. These vessels were all lying at anchor in the harbor. The Honolulu bark was brought alongside, and all her supplies were removed to the Shenandoah; her captain was brought on board and placed in double irons, and kept in this condition for three or four days. The captains of the three American vessels were visiting the missionary on the other side of the island at the time we arrived, but most of them returned in time to see their vessels burned. We took possession of all the vessels, the three that were under the American flag as well as the one under the Honolulu flag. Within an hour after we arrived we took possession, and the savages of the island were told they might go and plunder the vessels and take whatever they desired. They took the boats belonging to the vessels, sails, furniture, supplies, &c. They almost stripped the vessels. We fired and burned the Pearl on the day we arrived; the next Monday, the 6th of March, we gave the Edward Carey and the Hector to the flames; the Honolulu bark was burned about two days after. The vessels were all in the harbor at the time they were burned. The crews from all these vessels were turned on shore among the savages as soon as we took possession. All the captains, upon their return, which was not until after we had seized their vessels, with their officers, were brought on board the Shenandoah, placed in irons, and kept there until we were ready to sail, when they were paroled and sent to the shore with their men among the savages. We left them

there. The king of the island came on board while we were there. Waddell and his officers received him in full uniform, wearing their swords. He was brought aboard in the ship's gig, and entertained by the captain in his cabin, and shown round the ship.

We left the island of Ascension about the 14th day of March last, and cruised for about a month off the coast of Japan, hoping to fall in with some of the United States traders with that country.

The last part of May we entered the Okhotsk Sea; we there captured the whaling-bark Abigail, of New Bedford. We lay alongside two days, transferring the spirits, potatoes, and supplies from her to our vessel. There were on the vessel some twenty or thirty silk dresses which the captain and officers had purchased in Japan, and a quantity of fancy Japan work-boxes and fancy articles. All these were taken by the officers and men of our ship. The vessel was then burned. A part of the time we were lying by her our crew had reached the liquors, and were in a frightful state of intoxication. The second mate of this vessel, F. Manning, an American belonging to Baltimore, on coming on board, told our captain that he was well acquainted with the seas in the neighborhood, and would pilot the vessel Shenandoah to a place where we would find fourteen or fifteen United States whaling-vessels together. He was placed upon the articles as ship's corporal, and gave the information to the captain. We afterward, under his piloting, found eleven American vessels all together, nine
[170] of which were burned as hereafter *mentioned. Manning was at once for this service rewarded by being made a master's mate. He is now in London. After cruising for more than a week we made for Behring's Straits.

In the month of ——— we sighted two vessels within about nine miles from the land; they proved to be the ship William Thompson and ship Euphrates, both from New Bedford. They were both burned. While they were burning, another ship hove in sight; we gave chase under the Russian flag; she proved to be the English bark Robert Downs, of Sydney. We gave them our name as the Russian ship of war Prince Petropauloski, bound on a cruise; she saluted us and we parted.

In two or three days, near the entrance of Behring's Straits, we sighted three more vessels; they proved to be the ships Milo, the bark Sophia Thornton, and bark Jerry Swift; they were all captured. The Milo was bonded on condition of her receiving the crews of the others and the prisoners we had on board; the others were burned. This was in the month of June. She next vessel we took was the brigantine Susan Abigail, of San Francisco; she was twenty-eight days from San Francisco, and bound on a general trading voyage in the Arctic Sea. She had many fancy articles on board, but we took nothing from her, but burned her immediately, as the captain and crew had told us that General Lee had surrendered and the war was over. It was on the —— day of June last when we captured and burned this vessel. This was the first news we had that the war was over. This news depressed us. On the following night, about 12 o'clock, we took three other vessels: the bark J. C. Nye, of San Francisco: bark Nimrod, of New Bedford; and bark Catharine, of New Bedford, all whalers. These three last vessels were captured and burned on the night of ———.

The next vessels taken were the bark Isabella, of New Bedford: and bark General Pike, of New Bedford; and the bark Gypsie, of New Bedford. They were captured on the ———.

The General Pike was ransomed: the Isabella, and a bark called the Gypsie, of New Bedford, were burned. The Isabella was brought alongside the Shenandoah, and her stores taken out and placed on our vessel before she was burned. The crews from these vessels were all placed on the General Pike. Another vessel was in sight, but the captains from the prize-vessels told us she had the small-pox on board, and we let her pass, although she showed the American flag.

Early in the morning of ———, the weather being foggy, we were very nearly being run into by the bark Waverley, of New Bedford. We took her and burned her. On the same day the fog cleared off, and we saw several vessels anchored in a bay or roadstead; they were about eight or twelve miles from land. Most were at anchor: some were with their sails furled up: there were eleven altogether. We were at this time under the pilotage of Mr. Manning. It was through him that we had reached this point. They all hoisted the American flag. On our nearing them, we too hoisted the American flag. The first vessel proved to be the bark Martha, of New Bedford: she was under canvas, and was just going to anchor; she was boarded by us and taken possession of. We then came up to a lot of them; they were the bark Congress, of New Bedford; bark Nassau, of New Bedford; bark Corington, of New Bedford; the ship James Murray, of New Bedford; the ship Brunswick, of New Bedford; ship Hilman, of New Bedford; the bark Nile, of New Bedford; the ship Isaac Howland, of Warren, Rhode Island; and the bark Favorite, of Fair Haven. This last vessel, on our boat going to board her, made resistance. Her captain pointed a bomb-gun at us, and threatened to fire at us if we approached his ship. All his crew were armed with handspikes. At this time nearly all the vessels above mentioned were in our possession, and several of them were in flames, and the United States flag was still flying at our gaff or mizzen peak; we had not had any other up to this time flying.

On receiving this hostile reception, we returned to the Shenandoah and informed the lieutenant what had happened. He hauled down the United States flag, and hoisted the confederate flag on the Shenandoah, and approached with his vessel to within speaking distance, hailed the captain, and told him that every person must leave her within five minutes or he would fire into and sink them. Captain Waddell ordered one of the Whitworth guns to be loaded, and repeated the order to point the gun to hit that ship. Before the five minutes had expired all the crew had left her in their boats: the captain refused to do so, and remained on board. First Lieutenant Whittle, on seeing that the crew had left the ship, hailed the bark again, and told the captain to haul down his flag. The captain replied that he would not. The first lieutenant then ordered our boat to be hauled up, and, in great excitement, snatched a loaded rifle from one of the marines, jumped into the boat, and told us to give way and
[171] pull with all our might. On approaching the vessel, Lieutenant Whittle pointed the rifle at him, and told him if he did not within five minutes go and stand in the port gangway, leaving his arms on the poop, he would shoot him dead on the deck where he stood. The captain appeared to be intoxicated. We went round and boarded the vessel, took possession, and burned her.

We bonded the two ships James Murray and Brunswick, and burned all the rest. The crews of the burned vessels were placed on the Murray and Brunswick.

After firing these vessels we steered to the northward for a day and a night, but meeting with a heavy sea we turned about and steered for the south. Manning protested against our turning about, saying in a few more days he could find as many more vessels as we had already taken.

Three or four days after, about the ———, we spoke a Honolulu brig; hailed and asked her what news she had. He replied that General Lee had surrendered, and the northern President had been assassinated.

After this, on the 6th day of July, we left Behring Straits for the Pacific Ocean. When in the latitude of San Francisco, on the 2d of August, 1865, we spoke the bark Barracouta, of Liverpool, from San Francisco to Swansea, fourteen days out. We sent a boat on board, and he told us that the war was over, confirming the news we had heard before.

On the following day all hands were called aft, and Captain Waddell told them it was indeed true that the South had been suppressed, and the war over. He told the men all they had to do was to obey him; that he intended to take them to a British port; and that however much trouble they might be put to, he and his officers would be in a much worse condition, but that if they would stand by him he would stand by them. He alluded to a letter which had been sent aft by the crew, requesting him to go into a British port. He told them he would go into a British port. Some wanted to go to Australia, but they all seemed well content with his ultimate decision to come to Liverpool.

We rounded the Horn on the 13th September, and made direct for Liverpool. When in latitude of the Cape of Good Hope, the officers called a meeting and signed a petition requesting the captain to run in and land them at Cape Town. Captain Waddell refused to accede to this.

The next day Lieutenant Whittle waited on the captain, at the request of the officers, and renewed the matter. The captain still refused.

On the following day the men held a meeting, and signed a petition to the effect that they were willing to go wherever the captain took them. He then continued on his course for Liverpool, where we arrived on the 6th November, 1865.

Our general practice while cruising was, when we captured a vessel, to bring the men and officers to the Shenandoah and put them in irons. In some cases the officers were not put in irons. In approaching vessels our general practice was to hoist the English flag; this was done in most cases when we captured a prize or spoke a vessel. In a few instances we hoisted the Russian and American flags, but the English flag was the one we generally used.

The only inducements held out for men from vessels captured to join our ship were these; after they were put in irons, the officers would approach them and say, "Now, you are in irons, and will probably be kept there for a month, and you are earning nothing; now, if you will join us, you will be set at liberty, treated well, and earn good wages; you had, therefore, better consent and do it." Many agreed to do this.

F. Manning, the mate from the Abigail, was not put in irons at all. He became an active man among us as soon as he got on board, and volunteered his services to conduct us to the whaling fleet, and was thanked and complimented by the captain, and promoted for his services.

When we captured a vessel we always took all the money, jewelry, chronometers, and other valuables that were in the ship, and all the money and jewelry that the captain and officers had in their pockets or about them, except their watches and what they were wearing. In one or two instances their watches were taken from them by our men. Complaint was made by the captains of this to our officers, but they never got any redress.

After a vessel was condemned, and we had taken everything we wanted from her, we would proceed to break up her cabins and furniture with our axes, and then set her on fire. That is the way we did whenever we burned them. There were two cases where we sunk them.

[172] *A day or two before we arrived at Liverpool Captain Waddell had all the men called aft. He commenced to address them, and said when the ship first started she had $22,000 on board of her. Out of that he took $18,000 to defray the expenses in Melbourne; consequently, when he came to consider the large amount that was due to each one of us, the small amount of money left would go but a little way among us, but what there was should be equally divided among the officers and men, and on our arrival in Liverpool he would endeavor to see where the rest of our money was to come from. He said he had no doubt but what among the southern population of Liverpool who had been so interested and concerned in the war, there would be some who would be willing to contribute to pay us, who had done so much. He then went on to say what satisfaction the good conduct of the crew during the cruise had given him, and he only hoped up to the last moment of their stopping in the ship they would behave in the same orderly manner. He added, "You have gained a name by serving in this vessel that will never be forgotten; your acts will be talked of all over Europe." He said that when he got on shore it would be very annoying to him to have the men following him about Liverpool to the offices; he would therefore appoint Lewis Wiggins and James Brossman, to whom he would communicate, and who would communicate his wishes to the men. He promised to give us each a certificate of the exact amount due to us.

The day before we arrived in Liverpool we were paid the money that was promised on the ship, that is, the cash in hand was divided. My share was £5, which was paid me in English gold. A part of the crew were paid partly in English and partly in American coin.

We came on shore at Liverpool on Wednesday evening, the 8th day of November, 1865. We heard nothing more about the payment until the following Friday. I had gone to and was stopping at the Sailors' Home in Liverpool. A majority of the men from the Shenandoah were stopping at the Sailors' Home in Liverpool. No objection was made to our stopping in the Sailors' Home in Liverpool; they admitted all who applied, but would not take the name of our ship; they put us down under the name of another vessel.

On Friday, Wiggins, who had been stopping at the Sailors' Home with us, came and collected all the certificates that had been given us before we left the Shenandoah, showing the amount due to us, telling us that he would most likely pay us the following day.

About 10 o'clock on Saturday, the 11th of November, 1865, he commenced to pay off the crew up stairs in his own room at the Sailors' Home. Morton acted as clerk. He called them in one by one, and commenced paying them in full in English gold; he paid off about one-half of the crew in full. The following day I went down to the Home, and asked him to give me a few shillings, as I had not been paid, and he then told me there would not be enough money to go round and pay all.

The next morning he commenced paying the crew one-half their wages, and retaining their certificates. There were due me £49 14s. I got only £22. This was paid me in English gold. That same evening Wiggins went to London in disguise. Morton took a second-class ticket to Bristol.

On Friday, the 17th November, I went to the Waterloo Hotel, and there saw Captain Waddell; he took me up to his room. I asked him what prospect there was of our being paid. He told me he had given Wiggins enough money to pay all the men all that was due them, and he had no doubt but what Wiggins was acting for the best. This is the last time I have seen him, but several of the crew have seen him subsequently.

We arrived at Liverpool on the afternoon of the 6th of November, as above stated, and anchored in the river Mersey, near Her Majesty's ship Donegal. We came up with the confederate flag flying.

Just as we anchored, a lieutenant from the Donegal came on board. After conversing with Captain Waddell he left, and soon after Captain Paynter, of the Donegal, came; he remained about an hour, and as he passed over the side of the ship, said he would telegraph Earl Russell, and let Captain Waddell know the answer as soon as he got it. That night a company of marines, with two officers from the Donegal, came on board and took possession of the vessel. These men from the Donegal would not permit any of the officers or men to leave the vessel. That night Captain Whitehead, of Liverpool, sent off to the ship two barrels of ale, one of porter, a lot of fresh beef, fresh mutton, a large supply of vegetables, eggs, and cheese, enough for all hands, and two or three tubs of butter, with plenty of fresh bread. This was received on the vessel, and all hands partook of it. The next night Jones & Co. (or Jones, Highat & Co.) sent

[173] us off a boat-load of provisions, &c.; but the custom-house *officers would not permit it to come on board. Captain Paynter visited the ship frequently. On the morning of the day we were released he came, and as he was going he said, "Men,

you need not be impatient; you will soon be released, probably this evening: I am doing all in my power to obtain it for you. As soon as the formalities are got through with, and I receive the proper instructions, I will do it." That evening, the 8th day of November, he came on board in a tug-boat. As he came on board, he said, "I have come to release you, my men." He was cheered by the men. He went immediately aft. The men were all mustered. While we were mustering and making preparations to go aft, Captain Waddell sent some of the marines among the men to tell them they were all to be southerners when their names were called. I was myself told this by a marine by the name of John Ivors, who told me the captain had sent him to tell all the crew. On being mustered aft in the presence of Captain Paynter and Lieutenant Whittle, in consequence of this information, we all stated that we were southerners when our names were called out. The mode was this: we were all mustered one side of the vessel. Lieutenant Whittle called our names and number, and as each man was called, he passed in front of Captain Paynter, who addressed each, "What countryman are you?" All the Englishmen, Scotch, or Irish answered that they were southerners. The other foreigners answered according to their nation. As soon as this was done we were told to get into the steamer as quick as possible, which we did, and were then landed at Liverpool. No parole was asked or taken from any of us. We were told we were at liberty. Mr. Lynch, the carpenter, married an English woman some time before our cruise commenced, and was living before and is now living in Liverpool. On Thursday or Friday after we were landed, James Baines, a merchant of Liverpool, sent for all the officers of the Shenandoah to come to his office.

The annexed list contains the names of all the officers, petty officers, and men of the Shenandoah after we left Melbourne up to the time we arrived in Liverpool. There were some men who left the ship at Melbourne whose names I do not know. With two or three exceptions, the men and officers in the list are those that were landed at Liverpool. The list gives the nationality of each person, when he enlisted, and when he left the vessel.

(Signed) WILLIAM A. TEMPLE.

Sworn and subscribed to before me this 6th day of December, 1865, at Liverpool, in the county of Lancaster, in England. Before me,

(Signed) JAS. THORNELY,
Notary Public, Liverpool.

[Inclosure 3 in No. 24.]

List of the officers and men of the Shenandoah, referred to in the preceding affidavit.

OFFICERS.

James J. Waddell, commander; an American; came out in the steamer Laurel from Liverpool.

William C. Whittle, first lieutenant; an American; joined the Sea King at London.

John Grimball, second lieutenant; an American; came out in steamer Laurel from Liverpool.

Sydney Smith Lee, third lieutenant; an American; came out in steamer Laurel from Liverpool.

Frederick Chen, fourth lieutenant; an American; came out in steamer Laurel from Liverpool.

Dabney N. Scales, fifth lieutenant; an American; came out in steamer Laurel from Liverpool.

Charles Edward Lining, first surgeon; an American; came out in steamer Laurel from Liverpool.

Frederick McUlty, second surgeon; an American; came out in steamer Laurel from Liverpool.

Matthew O'Brien, first or chief engineer; an American; came out in steamer Laurel from Liverpool; was in the Alabama.

Charles Codd, first assistant engineer; an American; came out in the steamer Laurel from Liverpool; was in the Rappahannock.

John Hutchinson, second assistant engineer; a Scotchman; came out in and joined from the Sea King.

Francis McGuffney, third assistant engineer; an Irishman; came out in steamer Laurel from Liverpool; was in the Sumter and Alabama under the name of Curren.

Irvine S. Bullock, sailing-master; came out in steamer Laurel from Liverpool; was in the Alabama. Is brother to J. D. Bullock.

John Blackar; an Irishman; captain in the English merchant service; joined at Melbourne as captain's clerk.

Orris A. Browne, a passed midshipman; an American; came out in the steamer Laurel from Liverpool.

[174] *John J. Mason, a passed midshipman; an American: came out in the steamer Laurel from Liverpool.

Cornelius Hunt, master's mate; an American; came out in the steamer Laurel from Liverpool; was on the Georgia and Rappahannock.

F. C. Minor, master's mate; an American; came out in the steamer Laurel from Liverpool; was in the Alabama and Sumter.

Lodge Colton, master's mate; an American; came out in the steamer Laurel from Liverpool; was in the Rappahannock.

H. Manning, master's mate; an American; joined us from the bark Abigail; was second mate on her.

W. B. Smith, purser; an American; came out in the steamer Laurel from Liverpool; was captain's clerk on Alabama.

George Howard, boatswain; an Englishman; belongs to the royal navy of England, or had served in it; came out in steamer Laurel from Liverpool; has been in the Alabama.

Peter Guy, gunner; an Englishman; has been in the royal navy of England; came out in steamer Laurel from Liverpool.

John Lynch, carpenter; an American, from New York, but married to an Englishwoman residing in Liverpool; came out in steamer Laurel from Liverpool.

John O'Shey, carpenter, but resigned at Melbourne; came out in Laurel from Liverpool; was an Irishman by birth.

A. Alcott, sail-maker; an Englishman; came out in steamer Laurel from Liverpool; was on the Alabama.

PETTY OFFICERS.

Michael Moran, an Irishman; first captain of forecastle; came out in steamer Laurel from Liverpool.

William Warren, an Englishman; second captain of forecastle; came out in the steamer Laurel from Liverpool.

Louis Rowe, a Frenchman; captain of main-top; joined us from bark Alina.

Robert Dunning, an Englishman; captain of foretop; joined us at Melbourne.

Thomas Strong, an American; captain of mizzen-top; joined us at Melbourne.

Charles Cobbey, an Englishman; gunner's mate; joined us at Melbourne.

James Brounan, an Englishman; chief boatswain's mate; came out in steamer Laurel from Liverpool; was on the Alabama.

Thomas Hall, an Englishman; quartermaster; came out in steamer Laurel from Liverpool.

John James, an Englishman; carpenter's mate; joined us at Melbourne.

John Spring, an Englishman; captain of the hold; joined us at Melbourne.

William Crawford, an Englishman; gunner's mate; came out in the steamer Laurel from Liverpool; was on the Alabama.

Lewis Wiggins, a Russian; signal-quartermaster; came out in the steamer Laurel from Liverpool.

Ernest W. Burt, an Englishman; doctor's steward; joined us at Melbourne.

James A. Exshaw, an Irishman; purser's steward; joined us at Melbourne.

Peter Ramond, a Frenchman; captain of foretop; joined us from bark Alina.

William West, an Englishman; captain maintop; belongs to royal naval-reserve; joined us from bark D. Godfrey.

John Griffiths, an Englishman; captain mizzentop; came out in the steamer Laurel from Liverpool.

Henry Fox, or Henry Yates, an Englishman; gunner's mate; came out in steamer Laurel from Liverpool; was on the Alabama.

John Davy, an Englishman; boatswain's mate; joined us from bark D. Godfrey.

John W. Jones, a Welshman; quartermaster; came out in the steamer Laurel from Liverpool.

Jacob Hanson, a Dane; quartermaster; joined us from the bark L. M. Stacey.

Francis Tuft, an Englishman; cooper; joined us from the Edward.

Franklin Gloon, (his right name is ——— ———:) sailmaker's mate; an American; joined us at Melbourne.

Charles McLaren, a Scotchman; master-at-arms; joined us at Melbourne.

James Marlow, an Englishman; ward-room cook; came out in the Laurel from Liverpool.

Charles Hopkins, a negro, Baltimore; ward-room cook; joined us from schooner L. M. Stacy.

William Smith, an Englishman; ship's cook; joined us at Melbourne.

John Williams, a negro; ship's cook; joined us from bark D. Godfrey; left us at Melbourne.

William Bruce, a Malay; ward-room steward; joined us from bark Alina; left us at Melbourne.

David Alexander; corporal of marines; a Scotchman; joined us at Melbourne.

William Park, an American; corporal of marines; joined us from ship Hector.
William Fenner, an English boy; captain's steward; came out in the Laurel from Liverpool.
H. C. Canning, an Englishman; joined us at Melbourne; died October 29, 1865.

SEAMEN.

John Collins, an American; joined us at Melbourne.
Thomas Foran, an Irishman; joined us at Melbourne.
Lawrence Kerney, an Irishman; joined us at Melbourne.
John McDonal, a Scotchman; joined us at Melbourne.
John Ramsdale, an Englishman; joined us at Melbourne.
John Kilgower, a Scotchman; joined us at Melbourne.
Thomas Swanton, an Englishman; joined at Melbourne.
James Welch, an American; joined us from bark Pearl.
John Morris, a Portuguese; joined us from ship Hector.
George Adeias, a Portuguese; joined us from ship Hector.
Walter Way, an Englishman; joined us from the Susan.
John Hawthorn, an Irishman; joined us from ship General Williams.
Alfred Seaman, a Prussian; joined us from ship S. Abigail.
Charles Graft, a German; joined us from ship S. Abigail.
Antonio Delombas, a Portuguese; joined us from ship Hector.
John Blacking, a Dane; joined us from bark D. Godfrey.
John Moss, an Irishman; joined us at Melbourne.
William Simpson, an Englishman; came out in Laurel from Liverpool; was on the Alabama.
[175] *Joachim Roderichs, a Portuguese; joined us from ship Hector.
George Flood, an American; joined from bark D. Godfrey.
James Fegan, an Irishman; joined us at Melbourne.
Samuel Crooks, an Englishman; joined us at Melbourne.
John Simmes, an Englishman; joined us at Melbourne.
John Hill, an Irishman; joined us at Melbourne.
William Hutchinson, an Englishman; joined us at Melbourne.
Thomas Evans, a Welshman; joined us at Melbourne.
Charles H. Morton, an American; joined us at Melbourne.
George H. Gifford, an American; joined us at Melbourne.
John Kelly, an Irishman; joined us from brigantine Susan Abigail.
John Dowden, an American: was mate on the Abigail, and joined us as seaman.
Julius Colar, an American; joined us from the ship General Williams.
Alexander Pattison, a Scotchman; joined us from the Susan Abigail.
John Hilcox, an Englishman; joined us from the General Williams.
Henry Canning, an Englishman; joined us at Melbourne.
Joseph Steveson, a negro; joined us from the Pearl.
John Vanarery, a Canadian; joined us from the Gypsie.
Michael Rose, called Reed, an Englishman; came out in the Laurel from Liverpool; was on the Alabama.
William Bill, from Sandwich Islands; joined us from Abigail; died 26th October, 1865.
Henry Givens, from Sandwich Islands; joined us from Abigail.
John Mahoe, from Sandwich Islands; joined us from Abigail.
Joseph Long, from Sandwich Islands; joined us from Abigail.
James California, from Sandwich Islands; joined us from Abigail.
James French, from Sandwich Islands; joined us from Abigail.
John Sailer, from Sandwich Islands; joined us from Abigail.
William Brown, from Sandwich Islands; joined us from Abigail.
Joseph Kanaca, from Sandwich Islands; joined us from Abigail.
John Boy, from Sandwich Islands; joined us from Abigail.
Edward Wicks, a negro; joined us from the Waverley.
W. J. Jones, an Englishman; came out in Sea King.
James Ross, a Canadian; joined us at Melbourne.
John Williams, an English boy; joined us at Melbourne.
James Oar, an English boy; came out in Laurel from Liverpool.
Robert Rosell, a Spanish boy; joined us from the Hector.
Duke Simmons, a Malay; joined us at Melbourne.

FIREMEN.

John Martin, an Englishman; engine-storekeeper; came out in the Sea King.
David Marshall, an Englishman, first-class fireman; came out in the Laurel.
Thomas McLean, a Scotchman, first-class fireman; joined us at Melbourne.

William Brice, a Scotchman; joined us at Melbourne.
William Green, an Englishman; joined us at Melbourne.
William Rawlinson, an Englishman; came out in the Laurel from Liverpool.
William Clark, an Englishman; came out in the Sea King from London.
William Burgess, an Englishman; joined us at Melbourne.
Joseph Mullineux, an Englishman; joined us at Melbourne.
Henry Sutherland, a Scotchman; joined us at Melbourne.
James Carr, an Englishman; joined us from the ship J. C. Nye.
James Stranth, a Scotchman; joined us at Melbourne.

MARINES.

Henry Reiley, a Canadian; joined us at Melbourne.
William Kenyon, an Irishman; joined us at Melbourne.
Robert Brown, an Englishman; joined us at Melbourne.
John Murray, an Irishman; joined us from the bark Abigail.
Emanuel Silver, Portuguese; joined us from the bark Abigail.
William Burnet, a Prussian; joined us from the bark Abigail.
Thomas Barry, an Englishman: joined us from the brigantine Susan Abigail.
Thomas Floyd, an Irishman; joined us from bark Favourite.
John Ivors, an Irishman; joined us from bark Favourite.
Thomas Poulson, an Englishman; joined us from bark Favourite.
James Clury, an Englishman; joined us from bark Favourite.
John Grimes, an Irishman; joined us from bark Favourite.

(Signed) WILLIAM A. TEMPLE.
(Signed) JAS. THORNELEY,
Notary Public, Liverpool.

[Inclosure 4 in No. 24.]

Affidavit of Margaret Marshall.

I, Margaret Marshall, of No. 29 Benseidi street, Liverpool, say I am the wife of David Marshall. My husband was one of the firemen on the steamer Shenandoah, late in command of Captain Waddell. He went out from Liverpool in the Laurel and [176] joined the Shenandoah at the island of Deserta, near Madeira, and *remained on her during the whole cruise, and left her only after her arrival at Liverpool last month. His wages were £7 per month. They gave him a half-pay note for me; it was sent to me by my husband from Madeira. It was for £3 10*s.* per month, made payable to me. It was payable at the office of Fraser, Trenholm & Co., Liverpool, No. 10 Rumford place. It was paid regularly every month while he was gone, up to the 18th day of October last, on which day the last payment was made to me—I mean October 18, 1865. Mr. Robinson was the cashier in the office of Fraser, Trenholm & Co., who made some payments to me. The payments were made to me in person. They took my half-pay note from me at the office and now have it.

(Signed) MARGARET MARSHALL.

Sworn and subscribed to before me this 11th day of December, 1865.
JAS. THORNELY,
Notary Public, Liverpool.

No. 25.

The Earl of Clarendon to Mr. Adams.

FOREIGN OFFICE, *December* 30, 1865.

SIR: I have the honor to acknowledge the receipt of your letter of the 28th instant, inclosing further papers respecting the case of the Shenandoah, and to state to you that they shall receive due attention.

I am, &c.,
(Signed) CLARENDON.

No. 26.

Mr. Adams to the Earl of Clarendon.

LEGATION OF THE UNITED STATES,
London, January 3, 1866. (Received January 3.)

MY LORD: It may, perhaps, be recollected by your lordship that in the note which I had the honor to address to you on the 18th of November, allusion was made to a suggestion made by your predecessor, the Right Honorable Earl Russell, in his note of the 2d of the same month, which I was then answering, that looked to the possibility of a concurrent revision of the statutes of both nations, to the end that greater security might be given to them against those who endeavor to evade the letter of their present neutrality laws. Considering this in the nature of a proposition, I took the liberty to mention to you that I should with pleasure transmit it for the consideration of my Government.

I have now the honor to inform your lordship that the views of that subject expressed in my note have met with approval. It is, then, with regret, but without surprise, that I find myself directed to add that the United States do not incline toward an acceptance of his lordship's proposition.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

No. 27.

The Earl of Clarendon to Mr. Adams.

FOREIGN OFFICE, *January* 4, 1866.

SIR: I have the honor to acknowledge the receipt of your letter of the 3d instant, in which you inform me that the United States Government is not inclined to assent to a concurrent revision of the statutes of the two nations, with a view to the more complete execution of the duties of neutrality.

I am, &c.,
(Signed) CLARENDON.

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[177] *No. 28.

The Earl of Clarendon to Sir F. Bruce.

FOREIGN OFFICE, *January* 19, 1866.

SIR: In my dispatch of the 26th ultimo, I transmitted to you a copy of a dispatch addressed to Mr. Adams by Mr. Seward, and which had been communicated to me by the former, protesting against the course pursued by Her Majesty's government with regard to the Shenandoah.

Her Majesty's government have had this dispatch under their consideration in communication with the proper law-advisers of the Crown; and I have now to state to you that it is impossible for Her Majesty's government to avoid expressing their surprise and regret at the tone and

style which throughout characterize it. The dispatch imputes to Her Majesty's government, in plain terms, a determination to disregard "applications for justice" made by the United States government, and an intention to shelter from the punishment due to their offense persons known to be guilty of piracy.

Her Majesty's government think that by not replying to this extraordinary and unfounded charge they shall best consult their own dignity, and exhibit their desire to maintain friendly relations with the Government of the United States.

With respect to the proofs stated to have been furnished to Her Majesty's government of the alleged guilty practices of the Shenandoah, and the statements as to the nationality of her crew, I have to make the following observations.

Mr. Seward, in his dispatch, while dwelling only upon the crime of piracy, which he assumes to have been committed by the commander and crew of the Shenandoah, says that the alleged offenders, when under the power of Her Majesty's government, obtained their "discharge and unconditional enlargement" upon two grounds: first, that Her Majesty's government had in their possession no evidence to impeach a prevaricating plea of the commander; and, secondly, that none of those persons were subjects of Great Britain; "whereas," he says, "upon evidence which seems to this Government entirely conclusive, all the offenders were either native subjects of the Queen, or had become, by some sufficient form of refuge or domiciliation, amenable, equally with native subjects, to the penal laws of the realm."

Mr. Seward cannot be ignorant that Her Majesty's government have never alleged the fact that none of these persons were shown to be subjects of Great Britain, as a reason for not prosecuting them for piracy. Foreigners, guilty of piracy, are as much amenable to the tribunals of this country as natural-born subjects. It was only with reference to a very different question, namely, whether any charge could be made under the "foreign-enlistment act," that the nationality of these persons was, or was ever alleged to be, material. That question, of course, depended upon the words of the particular statute, under which the enlistment abroad or on the high seas of persons who had become by any "form of refuge or domiciliation" or otherwise, amenable to British laws while in this country, would not be an offense, unless they were "natural-born subjects of Her Majesty."

Mr. Seward does not commit himself to the assertion that Her Majesty's government were in possession of evidence to show that any of those persons who formed the crew of the Shenandoah when she arrived at Liverpool were natural-born British subjects; and, as a matter of fact, it is certain that Her Majesty's government were not in possession of any such evidence; nor could such a fact be presumed, in the absence of evidence against individuals coming to Liverpool on board a confederate ship of war, and not shown to have enlisted within Her Majesty's dominions.

To return to the first ground, the only material one, as to the charge of piracy, upon which Her Majesty's government is, and so far truly, said to have acted. Whether Captain Waddell's statement was or was not open to the charge of prevarication brought against it by Mr. Seward, it was not in the power of Her Majesty's government to detain any of those men without laying an information against them before a magistrate in the ordinary course of law, and supporting it by, at least, some *prima-facie* evidence. The simple fact is that there was no such evidence. But Mr. Seward says, (1,) that "every part of the unlawful

transaction complained of had occurred either in British ports, or on the decks of the Shenandoah, herself a British vessel; (2,) that all these transactions had been fully made known to Her Majesty's government; and, (3,) that any parties who could give the necessary testimony for the conviction of the pirates were not only within British jurisdiction, but actually within custody of Her Majesty's government."

Each of these propositions must be separately examined. The first seems to Her Majesty's government to imply that Mr. Seward's [178] charge of piracy against the *Shenandoah is not founded upon the alleged continuance of hostilities by Captain Waddell after he had received notice of the termination of the war, but that he designates as piracy all the captures made by that vessel during the whole course of the war, and endeavors to support that pretension by the allegation that she was throughout "a British vessel." To this it is enough to say that such a view is opposed either to universally acknowledged principles of law, or to notorious and indisputable facts. To universally acknowledged principles of law, if Mr. Seward means to contend that the commander and crew of a vessel, commissioned as a public ship of war by a revolutionary government which has been recognized as a belligerent power by neutral nations, can be charged in a neutral country with piracy, merely for capturing and destroying the ships of the other belligerent; to notorious and indisputable facts, if he means to deny that the Sea King was transferred and delivered by her former British owners and commander to agents of the Confederate States, by whom she was purchased in order that she might be employed and commissioned by and in the service of those States, or that she was actually so employed and commissioned as a public ship of war under the name of the Shenandoah from a period antecedent to the first capture made by her down to the close of the war. It cannot be too distinctly understood that no charge of piracy could possibly be preferred or entertained against this vessel under these circumstances by Her Majesty's government or in the courts in this country, unless it had been satisfactorily shown that this ship willfully continued to seize and destroy United States vessels after she was apprised of the termination of the war. But there is a further answer to the allegation that the Shenandoah is to be regarded as having been, while making war upon the United States, a British vessel. When she arrived at Liverpool Mr. Adams, on the 7th of November, 1865, requested Her Majesty's government to take possession of her, with a view to deliver her into the hands of his (the United States) Government, taking notice, at the same time, of the belligerent character which in the eyes of Her Majesty's government she had possessed, though suggesting that there might be grounds for taking criminal proceedings against the persons on board, either because "her ravages appeared to have been continued" after her claim to a belligerent character had, at all events, ceased, or because several of those persons were "British subjects."

Her Majesty's government having received from Captain Waddell the possession of this ship, surrendered by him expressly for the reasons alleged in his letter of the 6th of November, 1865, namely, that "as all the property of government had reverted, by the fortune of war, to the Government of the United States of North America, therefore this vessel, inasmuch as it was the property of the Confederate States, should accompany the other property already reverted," complied with Mr. Adams's request, and delivered up the ship to the agents of the United States Government; at the same time sending Mr. Adams a copy of Captain Waddell's letter. Mr. Adams, in a letter dated the 14th of

November, 1865, stated that the consul of the United States at Liverpool had taken charge of the vessel under his instructions; and added what has, unfortunately, not been verified by the event, that he "entertained no doubt that the promptness of this proceeding would give great satisfaction to his Government."

It is hardly necessary for me to point out to you that Mr. Adams's request for the delivery of this ship to the United States Government could neither have been made nor complied with, except upon the ground that she was, in the circumstances which had happened, the lawful property of that Government. If she had been British-owned, as Mr. Seward now desires to represent, the Government of the United States could have had no possible claim or title to her, even though she might have been guilty of piracy, nor could the Crown of Great Britain have acquired any title to or disposing power over her, by means of any surrender of Captain Waddell in the port of Liverpool, or by any other means short of a regular forfeiture and condemnation by process of law.

To Mr. Adams, when he made the request, all this was, of course, perfectly well known; and he also knew, if not otherwise, at all events from the proceedings before Vice-Chancellor Wood in the case of the United States *vs.* Prideaux, taken by his own direction, that the Government and the courts of this country must necessarily recognize his Government as entitled to the property in this vessel, on the ground stated by Captain Waddell, namely, that she had been acquired and was possessed, as public property, by the persons who during the war had exercised the powers of government in the Confederate States—a ground which, I may add, was also distinctly recognized by the judge of the United States prize-court in the recent case of the Wren. Her Majesty's government were at the time entitled to assume, and they did so assume, that this request was made upon this ground, on which alone it could be supported; and after having so obtained the delivery of the vessel, it certainly does not seem to Her Majesty's government to be consistent in the Government of the United States to deny that
[179] she was a *public ship of war belonging to and commissioned by the revolutionary government of the Confederate States.

I have dwelt so much upon this point because it seems to be that upon which Mr. Seward really relies. I now proceed to examine his second statement, namely, that "all the transactions" supposed to make out a case of piracy against the Shenandoah "had been," before the crew were released at Liverpool, "fully made known to Her Majesty's government."

This confirms Her Majesty's government in their impression that Mr. Seward does not mean to rely upon the allegation that the Shenandoah continued her ravages after she was apprised of the termination of the war. For the fact is, that the only particular with respect to any capture or captures made by the Shenandoah at any date or dates subsequent to the termination of the war, which had ever before that time been communicated to Her Majesty's government either by Mr. Adams or in any other manner, were contained in the documents relating to the capture of the William C. Nye, on the 26th of June, 1865, which were forwarded with Mr. Adams's letter to Earl Russell of the 21st of October last, and of which I now inclose copies.[1] Those documents, however, which included the protest of the master of the William C. Nye, made at San Francisco on the 7th of August last, are absolutely

[1] See inclosure 1 in No. 9.

silent as to any notice or knowledge of the termination of the war, either by the captors or by the master or crew of the William C. Nye, or by any of the persons met by them on board the Shenandoah who had belonged to the crews of vessels previously captured.

This seems to Her Majesty's government to be very strong negative evidence that the termination of the war was not, in fact, known at the time when and in the seas where this capture took place. But, whether that be so or not, these documents certainly did not put Her Majesty's government in possession of any evidence showing or tending to show that the crime of piracy had been committed.

There remains only Mr. Seward's third statement, that "any parties who could give the necessary testimony for the conviction of the pirates were not only within British jurisdiction, but virtually within the custody of agents of Her Majesty's government." As Mr. Seward has not explained to what persons he here refers, I can only say that the existence of persons able to give such testimony was not then known or indicated to Her Majesty's government; and if it was then known to the minister or any other agent of the United States in this country, it was not communicated by them to Her Majesty's government. If Mr. Seward means that some of the persons forming the crew of the Shenandoah could themselves have given available evidence for this purpose, it is hardly necessary to observe that no such evidence was offered or known to be available; and that it is not consistent with our usual method of administering justice to endeavor to extract from persons suspected, even on probable grounds of crime, admissions capable of being used against themselves.

Her Majesty's government have no further comments to offer upon this dispatch, except to repeat what they have formerly stated, that if the agents of the United States in this country, or any other persons, were in possession of evidence on which a charge of piracy against the officers and crew of the Shenandoah could have been supported before a magistrate, it was competent for them to have themselves preferred such a charge, and to have obtained a conviction thereon in due course of law.

You will read and give a copy of this dispatch to Mr. Seward.

I am, &c.,

(Signed) CLARENDON.

No. 29.

The Earl of Clarendon to Mr. Adams.

FOREIGN OFFICE, *January* 19, 1866.

SIR: Her Majesty's government having had under their consideration, in communication with the proper law advisers of the Crown, your letter of the 28th ultimo and its inclosures, respecting the case of the Shenandoah, I have now the honor to state to you that these papers contain the first evidence which has been submitted to Her Majesty's government bearing on the alleged piracy of Captain Waddell, and on the alleged breach of the foreign-enlistment act on the part of persons forming part of the crew of the Shenandoah when she arrived at Liverpool.

[180] *With respect to the charge of piracy, Temple, who shipped on board the Sea King, according to his affidavit, as an ordinary

seaman in the port of London, in October, 1864, certainly states that, on some day of June last, Captain Waddell was told by the captain and crew of a vessel which he had captured, that General Lee had surrendered, and that the war was over. It does not appear that this statement of the captain and crew, if actually heard by Temple, was at the time confirmed by anything written or printed, such as newspapers, letters, &c., and the truth of Temple's statement may be greatly doubted from the entire silence of the protest of the master of the William C. Nye, stated by Temple to have been afterward captured, upon the same point. The William C. Nye, it is to be observed, as appears from the protest of which a copy was forwarded by you to Lord Russell on the 21st of October last, was captured on the 26th of June. Captain Waddell continued to make prizes after this; but after the receipt of the next information, the date of which is not given further than that it was before the 6th of July, Temple does not assert that any further prizes were made. The next date which he gives is the 2d of August, when Captain Waddell made further inquiries of the Barracouta, an English vessel, and, upon receiving from her confirmation of the intelligence, determined to sail to England.

Her Majesty's government are advised that, upon this evidence, there would not be such a reasonable probability of obtaining a conviction on the charge of piracy as to warrant a prosecution. Temple's statement as to the first communication of the cessation of the war to Captain Waddell would probably be contradicted by witnesses on Captain Waddell's behalf; but even if it were uncontradicted, the jury might well doubt whether Captain Waddell really believed the information of what he may reasonably have regarded as highly improbable, until it was subsequently confirmed, and, if he did not believe it, the guilty knowledge necessary to his conviction would not be established.

With respect to the nationality of some of the crew of the Shenandoah, Her Majesty's government think that the statements of Temple, although he does not show what means he has of knowing that any of the persons described as British subjects in his list are natural-born subjects of Her Majesty, are such as to make further inquiries necessary. Endeavors will therefore be made to ascertain the present residence or whereabouts of those whom he describes to be British subjects, and to ascertain what further proof can be obtained on this subject. Mrs. Marshall cannot give evidence against her husband, but other evidence against him may possibly be obtained.

Prosecutions under the second section of the foreign-enlistment act will be instituted against any British subjects as to whom Temple's evidence can be confirmed by trustworthy testimony.

With respect to that part of your letter which refers to two eighteen-pounder guns being mounted on the deck of the Shenandoah when she left England, Her Majesty's government have to observe that, if this were true, it would be immaterial, inasmuch as you do not assert that either you or Her Majesty's government had information of it; and further, that the total silence of all witnesses in the case of The Queen *vs.* Corbett, who had been examined by the United States consul on the subject of these guns, throws some doubt, to say the least, on this part of Temple's story. Independently of which, it is clear that the general armament and equipment of the Shenandoah, with the necessary munitions of war, were provided by the Laurel, and there is nothing to render it probable that, without such equipment, and in the state in which she left this country, the Shenandoah, even if she carried the two guns alleged, was in the condition of an armed vessel capable of committing hostilities against the United States.

Among other statements in the depositions of Temple which appear to require notice, are some relating to the conduct of the governor and officers of the government at Melbourne, in Victoria.

Copies of your letter and its inclosures have accordingly been sent to the colonial office for inquiry as to the conduct of the authorities at Melbourne, as well as to the home office, with a view to prosecutions being instituted under the foreign-enlistment act, if sufficient evidence can be obtained to warrant proceedings being taken against any parties.

I am, &c.,
(Signed) CLARENDON.

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[181] *No. 30.

Mr. Adams to the Earl of Clarendon.

LEGATION OF THE UNITED STATES,
London, January 24, 1866. (Received January 25.)

MY LORD: I have the honor to acknowledge the reception of your lordship's note of the 19th instant, touching the evidence furnished in my letter of the 28th of December, to certain facts connected with the cruise of the steamer Shenandoah.

Whatever may be the weight attached to that evidence in a court of law, I have no reason to presume that, after the experience of preceding trials under the enlistment act, my Government would desere to be understood as furnishing it in the expectation of such use. The present object is, if possible, to establish the truth, so far as it may be obtained from the best sources, and to place it on record in a permanent form.

Fully believing that this may prove of eminent use to a comprehension of the precise nature of the obligations of neutral nations hereafter, I shall be happy to receive myself, as well as to furnish to your lordship, any further elucidation of the actual facts attending this extraordinary case that may appear, and that without regard to the bearing which it may be supposed to have on any particular view of the questions thought to be involved.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

No. 31.

The Earl of Clarendon to Mr. Adams.

FOREIGN OFFICE, *January* 29, 1866.

SIR: I have the honor to acknowledge the receipt of your letter of the 24th instant, and in reply I beg to state that Her Majesty's government will gladly co-operate with you in establishing the truth, not only as regards the Shenandoah, but in whatever may tend to render clear and practical the obligations of neutral nations.

I am, &c.,
(Signed) CLARENDON.

NORTH AMERICA. No. 1. (1867.)

CORRESPONDENCE

RESPECTING

BRITISH AND AMERICAN CLAIMS

ARISING OUT OF THE

LATE CIVIL WAR IN THE UNITED STATES.

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[1] *CORRESPONDENCE RESPECTING BRITISH AND AMERICAN CLAIMS ARISING OUT OF THE LATE CIVIL WAR IN THE UNITED STATES.

No. 1.

Mr. Adams to Lord Stanley.

LEGATION OF THE UNITED STATES,
London, September 17, 1866. (Received September 18.)

MY LORD: I have the honor to transmit to your lordship a copy of a note addressed to me by the Secretary of State of the United States, together with a summary therein referred to, which I have been instructed to present to you for the consideration of Her Majesty's government.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[Inclosure 1 in No. 1.]

Mr. Seward to Mr. Adams.

DEPARTMENT OF STATE,
Washington, August 27, 1866.

SIR: You will herewith receive a summary of claims of citizens of the United States against Great Britain for damages which were suffered by them during the period of our late civil war, and some months thereafter, by means of depredations upon our commercial marine, committed on the high seas by the Sumter, the Alabama, the Florida, the Shenandoah, and other ships of war, which were built, manned, armed, equipped, and fitted out in British ports, and dispatched therefrom by or through the agency of British subjects, and which were harbored, sheltered, provided, and furnished as occasion required, during their devastating career, in ports of the realm, or in ports of British colonies in nearly all parts of the globe.

The table is not supposed to be complete, but it presents such a recapitulation of the claims as the evidence thus far received in this Department enables me to furnish. Deficiencies will be supplied hereafter. Most of the claims have been, from time to time, brought by yourself, as the President directed, to the notice of Her Majesty's government, and made the subject of earnest and continued appeal. That appeal was intermitted only when Her Majesty's government, after elaborate discussions, refused either to allow the claims, or to refer them to a joint claims commission, or to submit the question of liability therein to any form of arbitration. The United States, on the other hand, have all the time insisted upon the claims as just and valid. This attitude has been, and doubtlessly continues to be, well understood by Her Majesty's government. The considerations which inclined this Government to suspend for a time the pressure of the claims upon the attention of Great Britain were these:

The political excitements in Great Britain, which arose during the progress of the war, and which did not immediately subside at its conclusion, seemed to render that period somewhat unfavorable to a deliberate examination of the very grave questions which the claims involve.

The attention of this Government was, during the same period, largely engrossed by questions, at home or abroad, of peculiar interest and urgency. The British government has seemed to us to have been similarly engaged. These circumstances have now passed away, and a time has arrived when it is believed that the subject may receive just attention in both countries.

The principles upon which the claims are asserted by the United States have been explained by yourself in an elaborate correspondence with Earl Russell and Lord Clarendon. In this respect there seems to be no deficiency to be supplied by this Department. Thus, if it should be the pleasure of Her Majesty's government to re-
[2] vert to the subject in a friendly spirit, the materials for any new discussion on *your part will be found in the records of your legation, properly and duly prepared for use by your own hand. It is the President's desire that you now call the attention of Lord Stanley to the claims in a respectful but earnest manner, and inform him that, in the President's judgment, a settlement of them has become urgently necessary to a re-establishment of entirely friendly relations between the United States and Great Britain.

This Government, while it thus insists upon these particular claims, is neither desirous nor willing to assume an attitude unkind or unconciliatory toward Great Britain. If, on her part, there are claims, either of a commercial character, or of boundary, or of commercial or judicial regulation, which Her Majesty's government esteem important to bring under examination at the present time, the United States would, in such case, be not unwilling to take them into consideration in connection with the claims which are now presented on their part, and with a view to remove at one time, and by one comprehensive settlement, all existing causes of misunderstanding.

In asking an early attention to the subject, it is supposed that you may, with propriety, dwell upon some of its important features, which, although they have heretofore been indicated by you, may, nevertheless, not hitherto have sufficiently engaged the attention of the British government.

In the beginning of the year 1861 the people of the United States had, by means of commercial enterprise at home and abroad, built up and realized the enjoyment of a foreign trade, second only among the nations, and but little inferior to that of Great Britain. They had habitually refrained from wars, and especially from intervention in the political affairs of other nations. Mutual recollections of ancient conflicts which for three-fourths of a century had held the two countries in a state of partial alienation and irritation had subsided, and what was supposed to be a lasting friendship had been established between the United States and Great Britain; at this moment a domestic disturbance arose in our country, which, although it had severe peculiarities, yet was, in fact, only such a seditious insurrection as is incidental to national progress in every state.

In its incipient stage, it was foreseen here that the insurgents would, as in all cases insurgents must, appeal to foreign states for intervention. It was supposed that their appeal, if successful anywhere, would be successful in Great Britain, popularly regarded in both countries, in one sense, as a kindred nation, in another sense as a rival, and in a third, by reason of great expansion of manufacture, a dependent upon the cotton-planting interest of the Southern States, which were to become the theater of the insurrection. It was foreseen that British intervention, even though stopping many degrees short of actual alliance, or even of recognition of the insurgents as a political power, must nevertheless inevitably protract the apprehended civil war, and aggravate its evils and sufferings on the land, while it must materially injure, if not altogether destroy, our national commerce.

When the insurrection began, the United States believed themselves to hold a position and prestige equal in consideration and influence to that of any other nation; and it was foreseen that foreign intervention in behalf of the insurgents, even to the extent only of recognizing them as a belligerent, must directly, and more or less completely, derogate from the just and habitual influence of the Republic. It was foreseen that, should the insurgents receive countenance, aid, and support, in any degree, from Great Britain, the insurrection might be ripened under such influences into a social war, which would involve the life of the nation itself. The United States did not fail to give warning to Her Majesty's government that the American people could not be expected to submit without resistance to the endurance of any of these great evils, through the means of any failure of Great Britain to preserve the established relations of peace, amity, and good neighborhood with the United States.

The earnest remonstrances thus made seem to the United States to have failed to receive just and adequate consideration. While as yet the civil war was undeveloped, and the insurgents were without any organized military force or a treasury, and long before they pretended to have a flag, or to put either an armed ship or even a merchant-vessel upon the sea, Her Majesty's government, acting precipitately as we have always complained, proclaimed the insurgents a belligerent power, and conceded to them the advantages and privileges of that character, and thus raised them, in regard to the prosecution of an unlawful armed insurrection, to an equality with the United States.

This Government has not denied that it was within the sovereign authority of
[3] Great Britain to assume this attitude; but, *on the other hand, it insisted in the beginning, and has continually insisted, that the assumption of that attitude, unnecessarily and prematurely, would be an injurious proceeding for which Great Britain would immediately come under a full responsibility to justify it, or to render

redress and indemnity. The United States remain of the opinion that the proclamation referred to has not been justified on any ground of either necessity or moral right, and that, therefore, it was an act of wrongful intervention, a departure from the obligations of existing treaties, and without sanction of the law of nations.

Upon a candid review of the history of the rebellion it is believed that Great Britain will not deny that a very large number of the Queen's subjects combined themselves and operated as active allies with the insurgents, aided them with supplies, arms, munitions, men, and many ships of war. The chief reply which Her Majesty's government has made to this complaint has been that they apprehended inconveniences from being involved in the contest, unless they should declare themselves neutrals; and, further, that they did, in fact, put forth all the efforts to prevent such aggressions by British subjects which the laws of Great Britain permitted.

Without descending on this occasion so far as to insist, as we always have insisted, that there was a deficiency of energy in the respect adverted to, you may remind Lord Stanley that, in the view which we have taken of the subject, the misconduct of the aggressors was a direct and legitimate fruit of the premature and injurious proclamation of belligerency against which we had protested, and that the failure of Her Majesty's government to prevent or counteract the aggressions of British subjects was equally traceable to the same unfortunate cause.

When the municipal laws of Great Britain proved, in practical application, to be inadequate to the emergency, the British nation omitted, for various reasons which seemed to us insufficient, to revise these laws, and the United States were left to maintain a conflict with a domestic enemy which British sympathy, aid, and assistance had rendered formidable, and in which British subjects continued throughout to be active allies, without any effective interposition by Her Majesty's government.

The claims upon which we insist are of large amount. They affect the interest of many thousand citizens of the United States in various parts of the Republic. The justice of the claims is sustained by the universal sentiment of the people of the United States. Her Majesty's government, we think, cannot reasonably expect that the Government of the United States can consent, under such circumstances, to forego their prosecution to some reasonable and satisfactory conclusion. This aspect of the case is, however, less serious than that which I have next to present. A disregard of the obligations of treaties, and of international law, manifested by one state, so injurious to another as to awaken a general spirit of discontent and dissatisfaction among its people, is sure, sooner or later, to oblige that people, in a spirit of self-defense, if not of retaliation, in the absence of any other remedy, to conform their own principles and policy, in conducting their intercourse with the offending state, to that of the party from whom the injury proceeds.

Subsequently to the time when Her Majesty's government disallowed the claims in question, and determined to exclude them from consideration, a part of the British realm, and certain of the British North American provinces, became the scenes of sedition, threatening insurrection and revolution against the government of Great Britain. Native-born British subjects residing here, some of whom have been naturalized, and more of whom have not been naturalized in the United States, sympathizing in those revolutionary movements, attempted to organize on our soil, and within our jurisdiction, auxiliary land and naval forces for invasions of Ireland and Canada. The Government of the United States, without waiting for remonstrances, appeals, or protests from Her Majesty's government, effectively put their municipal laws into execution, and prevented the threatened invasions.

Thus we have seen ruinous British warlike expeditions against the United States practically allowed and tolerated by Her Majesty's government, notwithstanding remonstrance; and we have seen similar unlawful attempts in this country against Great Britain disallowed and defeated by the direct and unprompted action of the Government of the United States.

Her Majesty's government, we think, cannot reasonably object to acknowledge our claims, and to adopt such measures as will assure the American people *that
[4] their friendly policy of non-intervention in the domestic controversies of Great Britain will be made reciprocal and equal.

I observe, finally, that the United States and Great Britain are two of the leading national powers in this age. The events of the last five years have conclusively proved that harmony between them is indispensable to the welfare of each. That harmony has been, as we think, unnecessarily broken through the fault of Great Britain; nor does there exist the least probability that it can ever be completely renewed and restored, unless the serious complaint which you are now again to bring to the notice of the British government shall be amicably and satisfactorily adjusted. Such an adjustment would be acceptable, we think, to the friends of peace, progress, and humanity throughout the world; while the benignant principles upon which it shall be based, being conformable to the law of nations, will constitute a guide for the conduct of commercial states in their mutual intercourse, which will everywhere be conducive to international peace, harmony, and concord.

I am, &c.,

(Signed) WILLIAM H. SEWARD.

[Inclosure 2 in No. 1.]

Summary of claims of citizens of the United States against Great Britain.

The following is an abstract of the claims filed in the Department of State by American citizens, native and naturalized, for damages sustained by them as the owners, mariners, freighters, or insurers of duly documented ships, captured and destroyed, or appropriated, by the officers and crew of the steamer Alabama; and as owners, insurers, or otherwise interested in the cargoes of such ships, or in charter-parties, for the services of such ships.

The several insurance companies named as claimants are corporations organized and doing business under the laws of the several States in which they are respectively located.

The ship Lafayette, (No. 1.) of 945[illegible] tons burden, registered at Portland, Maine, whereof Clement H. Soule, Enos Soule, Francis B. Soule, deceased, and Alfred T. Small, of Freeport, Maine, and Hinchman S. Soule, deceased, of New Haven, Connecticut, were the sole owners, and the said Alfred T. Small was master—sailed from New York October 20, 1862, with a cargo of corn, wheat, and lard, bound for Belfast, Ireland; was captured on the 25th October, 1862, and burned, with her cargo and stores, the Alabama wearing British colors at the time of the capture.

The owners claim for the value of the ship and freight	$98,978 68
Captain Small, for charts, nautical instruments, books, clothing, &c.	513 25
B. E. Clark, W. B. Astor, and J. B. Hart, constituting the firm of B. E. Clark & Co., of New York city, for 1,498 grain-bags, claim	4,496 70

The bark Elisha Dunbar, registered at New Bedford, Massachusetts, whereof William Watkins, Edward C. Jones, Caleb Anthony, George A. Dunbar, Ann H. Dunbar, and George A. Watkins, of New Bedford, and Benjamin Ellis, of Fairhaven, Massachusetts, were owners—sailed from New Bedford, August 25, 1862, with outfit for a whaling-voyage of forty months in the Atlantic and Indian Oceans. After taking sixty-five barrels of spermaceti oil she was captured and burned September 18, 1862, at or near latitude 39° 50′ north, longitude 35° 20′ west.

The owners claim for the value of the bark, outfit, and cargo, and for the loss of prospective catchings	$128,295 00
They admit that they have received upon policies of insurance of their respective interests	21,375 00
(Which may be claimed by the insurers, but they insist that their claim is not impaired or diminished by their assignments to the underwriters.)	

The bark Parker Cook, of Boston, 136 tons burden, whereof Edward Habich was sole owner, and Thomas M. Fulton was master, sailed from Boston November 13, 1862, laden with a general cargo, belonging to the said Habich, and bound for Aux Cayes, captured and burned November 17, 1862, off the east end of St. Domingo, bearing south-southeast about twenty miles distant.

Damages claimed by the Manufacturers' Insurance Company, of Boston, as assignees of Habich and Fulton, for value of vessel	$9,493 35
For value of cargo at Aux Cayes	14,280 94
For freight-list of the bark	1,625 29
Expense of master and crew for subsistence and passage home	180 00
Charts, books, &c., lost by master	485 00

The claims of the owner and master were assigned to said insurance company on the 26th January, 1862, in consideration of $17,100.

[5] The ship Virginia, of 316[illegible] tons burden, registered at New Bedford, Massachusetts, of which William Hathaway, jr., Joseph Wing, William R. Wing, and Mary C. Lace, the executors of Matthew Lace, deceased, viz, William Hathaway, jr., Edward W. Howland, and William Penn Howland, all of New Bedford; Richard C. Nichols, of Boston; Richard G. Lace, of Tilbury; Lorenzo Smith and Benjamin C. Cromwell, also of Tilbury; S. W. Carey, administrator of Le Roy M. Yule, late of New York; Henry Barling and Abram H. Davis, of New York; and Edward D. Mandell, of New Bedford, executors of Edward Mott Robinson, late of New York, were owners, sailed from New Bedford, August 26, 1862, on a whaling voyage, and was captured near latitude 39° north, longitude 34° west.

The owners claim for value of bark and outfits, and of the fair and reasonable cargo which might have been taken	$153,950 00

Subject to deduction for amount received upon policies of insurance, $13,500, for which the insurers are entitled to claim.

The bark Lauretta, 284 tons burden, of Boston, whereof Samuel C. Bailey and Marshall M. Wells, of Bristol, Maine; Samuel Lane, Joseph Teague, and Harriet B. Little, administratrix of Robert M. Little, deceased, and Joel Huston, all of Damariscotta, Maine; and William Ropes, of Boston, were owners, and M. M. Wells was master, sailed from New York October 25, 1862, with a cargo of flour and staves, for Madeira and Messina; was captured and burned, with cargo, October 28, 1862.

The owners claim for value of the bark	$15,000 00

The ship Golden Eagle, of New Bedford, 1,120 tons burden, whereof Edward M. Robinson, H. L. Howard, executrix of B. L. Howard, deceased, and John A. McGaw, were owners, and Edward A. Swift was master, sailed from Howland's Island November 23, 1862, with a cargo of guano, bound to Cork for orders; was captured and burned February 21, 1863, near latitude 29° 17′ north, longitude 45° 15′ west.

The owners claim for the value of the vessel the sum of	$36,000 00
For freight	26,000 00
Making a total of	62,000 00
The master, for loss of personal effects, the sum of	1,165 00

The Nora, of Boston, whereof George B. Upton and George B. Upton, jr., of Boston, Massachusetts, were owners, and Charles E. Adams was master, sailed from Liverpool for Calcutta February 18, 1863, under charter of W. E. De Matbos, the owners having no other interest in the cargo than their lien for freight; was captured March 29, 1863, in latitude 1° 23′ north, longitude 26° 30′ west, and burned.

The owners claim for value of ship and freight	$80,000 00
The master for one year's salary	1,800 00
For clothing, books, charts, &c	1,700 00

The bark Union Jack, of 482$\frac{5}{95}$ tons burden, whereof Chas. P. Weaver, of Braintree, Massachusetts, Benj. F. Delano, Frederick Chandler, Charles A. Cousins, Elisha H. Ryder, Maurice M. Pigott, Alfred B. Low, William H. Haskins, Henry Pigeon, Otis C. Howe, John Howe, jr., Samuel Averill, and Edward Johnson, of Boston, Massachusetts; Norton Pratt, of South Braintree, Massachusetts; Luther Robie, of Nashua, New Hampshire; Louisa Wilde, of Boston, and John Atkinson, were owners, and the said Chas. P. Weaver was master, sailed from New York March 28, 1863, with a general cargo, bound for Shanghai, China, on the 3d of May, 1863; in latitude 9° 40′, longitude 32° 30′ west, was captured and burned, with cargo and stores.

The owners claim for value of ship the sum of	$35,000 00
For balance due on charter-party, (with premium on exchange at Shanghai, where payable)	6,000 00
The master, for instruments and personal effects, stores for crew, expense of passage and return to the United States, (with premium on exchange at Shanghai)	2,720 00
Charles D. Lewis, of New York City, for merchandise destroyed in said ship, (with profits equal to exchange on Shanghai)	857 70
Franklin Knight, of New York, a passenger, for loss of library, clothing, expenses, and damages	10,015 00
Byron Binninger, of New York, also a passenger, with his wife, for passage-money, goods, expenses, and time	1,782 83
Charles H. Platt, of New York, for merchandise lost	739 48
Geo. A. Potter, of New York, for merchandise, after deduction of amount received from Atlantic Mutual Insurance Company, of New York, the sum of	7,584 33
The Sun Mutual Insurance Company, of New York, as insurers and assignees of H. F. Vail, for merchandise lost in said ship	1,400 00
The Pacific Mutual Insurance Company, of New York, as insurers and assignees of J. Cutter Faller, of New York, on merchandise lost with said ship	1,822 00

[6] The ship Alert, of 398$\frac{8}{95}$ tons burden, registered at New London, Connecticut, whereof Samuel Church was master and part owner, and Moses H. Grinnell and Robert P. Minturn, of the city of New York, Richard H. Chappell, Henry P. Havens, Francis Allyne, Robert Coit, Robert H. Glass, Thomas P. Williams, and John Clark, of New London; Mrs. Harriet P. Williams, of Norwich, Connecticut; Edward Church, James S. Rogers, of Montevideo, all native citizens, were the remaining owners, sailed from New London, August 20, 1862, on a sea-elephant and whaling

voyage, to the waters about the Azore Islands; on the 9th September, 1862, was captured off the island of Flores, and burned, with her entire equipment and stores.

Moses H. Grinnell and Robert Minturn, owners of one-eighth of the ship, and who were not insured, claim for loss of their share of the vessel and outfit	$6,500 00
The remaining owners of seven-eighths of the vessel claim for their interest in the vessel, outfit, and oil on board	8,058 90
Having deducted $13,300 received on insurance, which is claimed by the underwriters, they also claim for their damages, by occasion of the breaking of the voyage	30,000 00
The Atlantic Mutual Insurance Company, of New York, as underwriters on ship and outfit, and assignees of owners insured, claim	13,300 00

The bark Conrad, of 347$\frac{8}{95}$ tons burden, registered at Philadelphia, Pennsylvania, whereof John W. Field, of that city, was sole owner, sailed from Buenos Ayres, June 7, 1863, laden with a cargo of wool, bound for New York; was captured June 19, 1863, near latitude 25° 44′ south, longitude 39° 51′ west; was armed by the captors, and used as a consort or tender to the Alabama.

The Atlantic Mutual Insurance Company, of New York, claim as underwriters upon the vessel, and as assignees of the owner	$10,000 00
Also, as insurers of R. W. Ropes & Co., of New York, upon part of the cargo	6,570 00
The said R. W. Ropes & Co., for loss over and above sum received of insurers	16,797 36
The Sun Mutual Insurance Company, of New York, as insurers upon part of cargo, and assignee of Wm. C. Kirkland and Van Sacks, of New York City	37,205 00
The Columbian Insurance Company, of New York, as re-insurers of the Sun Mutual Insurance Company upon part of the risk above stated, the sum of	17,205 00

The ship Thomas B. Wales, of 599$\frac{6}{95}$ tons burden, registered at New York, of which Thos. B. Wales, Geo. B. Wales, and Nathaniel W. Emmons, all of Boston, Massachusetts, were the sole owners, sailed from Calcutta, laden with passengers and a cargo of general merchandise on the 9th of June, 1862, bound for Boston; was captured and burned November 8, 1862, in latitude 29° north, longitude 58° west, (or thereabouts,) with cargo and stores.

The owners claim for loss of ship, cargo, and freight, over and above the sums received by them from the several underwriters on policies of insurance	$39,811 00
The Atlantic Mutual Insurance Company, as underwriters upon ship and cargo	130,264 00
The Sun Mutual Insurance Company	5,000 00
The China Mutual Insurance Company, of Boston	9,200 00
The Alliance Mutual Insurance Company, of Massachusetts	5,000 00
J. S. Farlow & Co., of Boston, for merchandise burned with the ship	911 40
Geo. H. Fairchild, a passenger, with his wife, and daughters, and servants, and for personal effects, stores, and expenses	4,400 00
Joshua B. Atkins, of Provincetown, Massachusetts, first mate, for charts and instruments, merchandise on private venture, wages, &c., the sum of	1,450 00

The bark Sea Bride, of 447 tons burden, registered at Boston and Charlestown, whereof Caleb Eaton, Abriel Eaton, Elbridge G. Choate, and Charles F. White, of Boston; Rosina Clark, administratrix of James Clark, deceased, of Charlestown, Massachusetts; David E. Mayo, of Chelsea, Massachusetts; William Currier, Jonathan Kenniston, and James B. Kenniston, of Newburyport; Zenos D. Bassett, Elisha Bacon, Wm. S. Russell, of New York; and Elisha Rider, of Boston, were sole owners, and said said Charles F. White, master, sailed from New York May 28, 1863, with a general cargo, bound for Table Bay, Cape of Good Hope; was captured August 5, 1863, within Table Bay, and, the owners claim, in British waters, and became a total loss.

The owners claim for vessel, equipment, and stores	$30,000 00
Amount due them under charter-party to Rufus Greene & Co., of Providence, Rhode Island	10,500 00
Charles F. White, the master, for personal effects, advanced wages, and expenses	3,393 00

Rufus Greene, William J. Arnold, and Benjamin R. Arnold, for invoice value of cargo, $36,945.12, and for damages upon non-arrival at port of destination, $8,500—a total of	45,445 12
The Columbian Insurance Company, of New York, as underwriters of shares in ship, and freight, and portions of cargo to sundry owners	29,300 00

The bark Amazonian, of 480$\frac{38}{95}$ tons burden, registered at the port of Boston and Charlestown, whereof Elisha H. Rider, of Chelsea, Massachusetts; David E.
[7] Mayo, Ariel *Gove, Winslow Loveland, Rosina Clark, administratrix of James Clark, deceased, Maurice M. Pigott, Hiram Baker, Henry A. Baker, of Boston, Massachusetts; John F. Cunent, of West Lynn; James Merrill, Solomon Littlefield, Hiram Littlefield, Atkinson Stannard, Daniel C. Rogers, John R. Stannard, Jonathan Kingston, and Geo. B. Merrill, of Newburyport, Massachusetts; Christopher Keith, Ephraim Keith, and Sylvester K. Small, of Chatham, Massachusetts; Zenos D. Basset, Elisha Bacon, and William Russell, of the city of New York, were owners, and the said Winslow Loveland was master, sailed from New York April 22, 1863, laden with general merchandise, and bound for Montevideo; was captured June 2, 1863, and burned, with cargo and stores.

The owners claim for the value of the bark $32,000, and for amount due on a charter-party of it to Edward F. Davidson, of New York, $11,000, making a total of	$43,000 00
Winslow Loveland, master, for loss of nautical instruments and clothing, the sum of	260 00
David Mayo, part owner and former master, for instruments, stores, and advanced wages	1,566 00
The New York Mutual Insurance Company, as underwriters upon cargo	250 00
The Commercial Insurance Company, of New York, insurers of H. D. Cordova & Co.	3,385 00
The same company, the New York Mutual Insurance Company, and the Union Mutual Insurance Company of New York, as assignees and re-insurers of the Orient Mutual Insurance Company, against its risks taken on cargo	8,156 00
The Sun Mutual Insurance Company, of New York, as insurers of cargo for sundry persons, the sum of	5,725 00
The Columbian Insurance Company, of New York, insurers of cargo for sundry persons	12,750 00
Also as re-insurers to New England Mutual Insurance Company, of risk on cargo	10,000 00
To Franklin Insurance Company	2,500 00
The Pacific Mutual Insurance Company, as assignees and insurers of Henry D. Cordova & Co., the sum of	3,385 00

The bark La Fayette, (No. 2,) of New Bedford, of 310$\frac{33}{95}$ tons burthen, whereof William Lewis was master, and Ivan H. Bartlett, jr., and George F. Bartlett, of New Bedford, were managing owners, sailed from New Bedford, May 20, 1862, on a sperm-whaling voyage, with provisions for twenty months; was captured on the 15th of April, 1863, near the island of Fernando de Noronha, and burned, with the oil on board, and stores.

The owners claim for ship and outfit	$24,000 00
For oil and $80 cash on board	10,475 00
For value of the enterprise in the probable further catch of oil	33,446 00
William Lewis, master, for clothing, instruments, and goods in private venture, the sum of	1,050 00
Geo. F. Bartlett, part owner, for goods on board for trading purposes	500 00

The brig Kate Cosey, of Westport, in the collection district of New Bedford, Massachusetts, of 320 tons burden, whereof Stephen Flanders was master, and Alexander H. Cosey, of Westport, managing owner, sailed from the port of Bravo, October 13, 1862, on a whaling cruise, and laden with whaling stores; was captured April 15, 1863, near the island of Fernando de Noronha, and burned on the 17th of the same month:

The owners claim for the value of the brig, outfit, and oil on board	$27,800 00
For value of reasonable prospective catch of oil	1,820 00

The ship Sea Lark, registered at Boston, of 973 tons burden, whereof W. F. Peck was master, and Edward Mott Robinson, of New York, Samuel G. Reed, of Roxbury, Massachusetts, and Lyman Grimes, of Brooklyn, New York, were sole owners, sailed from Boston March 28, 1863, laden with general cargo, and bound for San Francisco;

was captured May 3, 1863, near latitude 9° 30′ south, longitude 31° 20′ west, and burned, with its cargo, except such as was pillaged by the captors.

Edward M. Robinson, owner, claims for the value of uninsured interest on ship-stores and freight	$37,250 00
Samuel G. Reed, owner, for his uninsured share of outfit and freight	12,937 50
Lyman Grimes, owner, for uninsured share of outfit and freight	4,312 50
The Mercantile Marine Insurance Company, of Boston, for insurance paid on share (one-eighth) of Lyman Grimes in the ship	5,000 00
The Columbian Insurance Company, of New York, for insurance paid on share (three-eighths) of S. G. Reed in the ship	15,000 00
To Clark and Wilbur, and W. H. Taylor, on cargo	3,720 00
Ebenezer B. Philips, of Boston, as owner of part of cargo	4,320 00
The Metropolitan Insurance Company, of New York, for insurance paid Robert Morris & Co. on part of cargo	2,000 00
Locke and Montague, for goods on board, the sum of	458 98
The Sun Mutual Insurance, Company of New York, for loss paid to D. F. White, of Boston, goods to the value of	450 00
Holmes, Goodwin & Co., of New York, for goods to the value of	3,656 06
Dimon Hatford, of Malden, Massachusetts, for goods to the value of	4,707 04
[8] *Hostetter & Smith, of Pittsburgh, Pennsylvania	71 00
The Washington Insurance Company of Boston, insurers of W. Winson & Co., on goods	11,675 00
Insurers of Chas. Soule, jr., on goods	3,300 00
Moses Ellis and Philip L. Weaver, of San Francisco, on merchandise	11,929 27
Robert Morrison & Co., for goods over and above insurance, (received $2,000 from Atlantic Mutual Insurance Company, and $2,000 from Metropolitan Insurance Company of New York)	1,444 00
Van Winkle & Duncan, of New York, on merchandise	698 34
Daniel L. Perkins, of Oakland, California, on merchandise	530 00
Atlantic Mutual Insurance Company, of New York, as insurers of cargo of R. Morrison & Co., and others, the sum of	36,968 00
The New England Mutual Insurance Company, as insurers of sundry owners of merchandise	12,174 00
John Wesley Brittan, Alexander Dunbar, McDonald & Kimbal, C. Eldridge, of San Francisco, (J. W. Brittan & Co.,) merchandise	6,517 68
George Osgood and James Burgess Stetson, of San Francisco, for goods. (Over and above $1,000 received for insurance from Merchants' Mutual Insurance Company, of San Francisco.)	1,718 50
Lewis Hatch, of Boston, Massachusetts; Isaac Hatch and Jacob Hatch, of San Francisco, for merchandise	1,077 50
Pio Bisagno, Bartolomeo and Luigi Bisagno, of San Francisco, for goods lost.	735 26

The Talisman, of New York, of the burden of 1,237$\frac{76}{95}$ tons, whereof D. H. Howard was master, and Geo. Warren, of the city of New York, and Eben B. Crocker, his partner, were (by register at that port) the sole owners, sailed from New York May 2, 1863, laden with coal and general cargo for Shanghai; was captured by the Alabama on the 5th June, 1863, near latitude 14° 47′ south, longitude 34° 7′ west, and burned, with cargo and stores.

The Pacific Mutual Insurance Company, as insurers of merchandise lost on board, as assignees of Jno. L. Martin, of New York, $175; of Jas. Spear, of Philadelphia, $850; of J. Cutler Faller, of New York, $4,234, making a total of	$5,269 00
The New York Mutual Insurance Company claim damages, as assignee, for insurance paid by it	15,094 00
And for insurance on ship of Crocker & Warren, to whose assignee, Francis Skiddy, was paid	10,000 00
Antoine Daniel, a naturalized citizen, of Philipsburgh, Maine, for loss of personal effects, a private adventure of merchandise on board	1,455 00
Columbian Insurance Company, of New York, as insurers and assignees upon cargo of W. H. Fogg & Co.	16,907 00
Upon freight, also, of W. H. Fogg & Co.	2,591 09
The Washington Insurance Company, of Boston, as insurers aad assignees of Stephenson, and upon the property of Crocker & Warner, the sum of	10,000 00
Mrs. J. H. Thayer, of Williamsburgh, New York, for loss of money, time, &c., of minor son, William, on board	1,000 00

The Atlantic Mutual Insurance Company of New York, as insurers and assignees of Warren & Crocker, on one-third of ship	$20,000 00
Of James Jewett, on goods	6,200 00
Bogert & Oakley, on goods	973 00
Dehon, Clark & Bridge, on goods	2,300 00
P. S. Forbes, on merchandise	19,500 00
Westray, Gibbs & Hardcastle, merchandise	1,100 00
Backlin & Crane	17,607 00
Making a total of	67,680 00

The Winged Racer, an American ship of 1,767$\frac{4}{5}$ tons burden, duly registered in the port of New York, whereof George Cumming was master, and Robert W. Taylor, Henry W. Hubbell, George Ashton, and Edward H. Gillian, all of the city of New York, were the sole owners, sailed from the port of Manila October 8, 1863, loaded with hemp, sugar, indigo, pearl-shells, and cigars, bound to the port of New York. On the 10th November, 1863, when within three miles of North Island, a Dutch possession, the Winged Racer was captured by the Alabama, and, after being plundered by the crew of the latter, was set on fire and totally destroyed, with the cargo and stores remaining on board.

The owners claim damages as follows:

For the value of the ship at the time of her destruction, exclusive of her stores and outfit	$80,000 00
For value of her freight	22,095 00
Robt. W. Taylor and Henry W. Hubbell, part owners of the ship, were owners of part of the cargo, and claim damages for the value of the said cargo, at the port of destination, at the time it would reasonably have arrived but for its destruction *in transitu*, (over and above the sum of $15,000 received by them from insurers and freight,) to the sum of	233,844 81
They state that the Pacific Insurance Company insured said goods to the amount of	15,000 00
George Cumming, of Brooklyn, master, for his personal effects, merchandise loaded on his account, the sum of	2,784 00

[9] * The Atlantic Mutual Insurance Company of New York, as assignee of Young's & Co., for insurance paid on cigars and indigo by said company $20,118 00

As assignee, &c., of Young's, Smith & Co., for insurance paid on 55 cases pearl-shells	2,720 00
Of Parsons & Petit, insurance paid on indigo, sold to arrive	300 00
Of George Ashton, part owner, for insurance on one-eighth of vessel	6,000 00
And one-eighth of freight, making	32,138 00
The Columbian Insurance Company, of New York, as re-insurers and assignees of the Pacific Mutual Insurance Company, upon cargo on board	$5,000 00
The Pacific Mutual Insurance Company, of New York, claim as assignees and insurers of Henry W. Hubbell, upon $\frac{150000}{150177}$th of hemp and sugar destroyed on Winged Racer	15,000 00
George W. Thompson, of Portsmouth, New Hampshire, first mate of the Winged Racer, for clothing, instruments, and other property, besides sickness and expenses	980 00

The ship Contest, of 1,098 tons, duly registered at New York, whereof Abner A. Low, Josiah O. Low, Lucius Hyde, jr., Ann D. B. Low, Thomas Vernon, A. Low, and Edward H. R. Lyman, of New York; Joseph Z. Robert, of Rye, New York; Nathaniel B. Palmer, William H. King, of Rhode Island, were owners; and Frederick G. Lucas, master, sailed from Kanagawa 14th October, 1863, laden with rags, cotton, tea, and other merchandise, bound for New York. On the 4th November, 1863, about latitude 5° 14′ south, longitude 106° 50′ east, the ship was captured by the Alabama and burned, with her cargo.

The owners claim damages for the value of $\frac{3}{4}$ uninsured of the vessel	$26,500 00
And for freight, whereof $20,000 was insured and paid to them	30,522 38
The Atlantic Mutual Insurance Company, of New York were the insurers, and had paid upon $\frac{3}{100}$ of the ship the sum of	18,500 0

The owners also claim damages for the destruction of cargo, which was mostly owned, and all of which was consigned to them, to the amount of its value	$61,500 00
Less the amount insured thereon and paid on abandonment to the Atlantic Mutual Insurance Company.	
Frederick George Lucas, master, for his books, charts, nautical instruments, clothing, merchandise, shipped on his account and venture, expenses of maintenance and passage to the United States, and for loss of time	4,638 00
Oliver Bryan, 29 South street, New York, for merchandise lost, in Mexican dollars	180 59

The American bark Lamplighter, of 360 tons burden, duly registered in the ports of Boston and Charlestown, whereof David Howland, David Hinkley, and others named in the ship's register (a copy of which was filed with their memorial 29th July, 1864) were the owners, and Orin J. Harding was master, sailed from New York 9th October, 1863, laden with a cargo of tobacco, and bound to Gibraltar. On the 15th October, 1863, the bark was captured and burned, with her cargo and stores.

The owners claim damages for the value of the bark	$18,500 00
For freights, (⅜ by those who presented claims of $3,780,) say	50,040 00
The Columbian Insurance Company, of New York, as insurers and assignees upon the freight of Bassett & Nickerson	5,000 00

The American ship Charles Hill, of 699 tons, duly registered at Boston, whereof Charles Hill and Charles J. Hill, of Boston; John Currier, of Newbury, Connecticut; and William Lambert, of Portsmouth, New Hampshire, were sole owners, and Franklin Percival, master, sailed from Liverpool February 12, 1863, laden with salt, and bound to Montevideo. On the 25th of March, 1863, near latitude 1° 23′ north, longitude 26° 30′ west, was captured and totally destroyed by fire.

The owners claim for the loss of the ship	$32,000 00
And the further sum of (on the cargo on board)	11,735 33
Making	43,735 33
Frank Percival, of Barnstable, Massachusetts, master of the Charles Hill, claims for instruments, books, clothing, money, &c	$1,542 60

The bark Amanda, a duly registered American vessel, whereof Thomas J. Stewart, Timothy Crosby, John H. Crosby, Benjamin S. Crosby, George Crosby, Anna L. Crosby, Joseph H. Wheelwright, and John B. Foster, of Bangor, Maine, and Sarah H. Pendleton, administratrix of the estate of Charles Hugh Pendleton, deceased, of Searsport, Maine, were sole owners, and Isaiah Larabee was master, sailed from Manila, laden with sugar and hemp, the 18th September, 1863, bound to Queenstown, G. B. On the
[10] 6th November, 1863, about one hundred and twenty-five miles south southwest of Java Head, the bark was captured by the Alabama and burned, with her cargo and stores.

The owners claim the value of the bark and freight, in the sum of	$68,000 00
Subject to a deduction of $2,500 for insurance, as below stated.	
Isaiah Larabee, master, claims for loss of primage and personal effects	2,039 37
Hiram Emory Swain, of Frankford, Maine, first mate, for clothing, &c	690 00
The Merchants' Mutual Insurance Company, of Bangor, as insurers and assignees of the interest of Joseph A. Wheelright and Catherine McG. Foster, part owners	2,500 00

The American bark Tycoon, duly registered at the port of New York, of 717⅝ tons, whereof William Warren, D. Gookin, William W. Wakeman, Matthew Bird, Charles Dimon, John B. Dickinson, Andrew T. Stewart, of New York City; Frederick Dimon, Norwalk, Connecticut; and Jonathan Godfrey, of Southport, Connecticut, were sole owners; and Edward Ayres, of Wilmington, Delaware, was master, sailed from New York the 19th March, 1864, with a general cargo, bound to San Francisco. On the 27th April, 1864, in latitude 10° 55′ south, longitude 31° 25′ west, the Tycoon was captured by the Alabama, and, after being stripped of such stores, spars, and cargo as the captors desired, was set on fire by the latter, and became a total loss.

The owners claim damages for the value of the ship, with her outfit	$64,000 00
For freight and primage	24,559 78
Making	88,559 78

The Atlantic Mutual Insurance Company, of New York, were the insurers to different mercantile firms and individuals of goods shipped on the Tycoon, and described in fifty-five bills of lading. It paid the parties insured, upon the abandonment to it of such goods and claims for damages, the several sums insured, and claims, as the assignee of them respectively, sums to the amount of	$121,896 00
De Witt, Kittle & Co., of New York, claim for goods shipped on their account	89,885 44
For commissions on freight lost on said bark, (2½ per cent. on $24,559.78,) the sum of	613 99
Commission on goods consigned to their firm in San Francisco	550 00
Making an aggregate of	11,049 43
Edwin Deming, of Hartford, Connecticut, claims for goods shipped by him, (uninsured)	81,170 50
Locke & Montague, of New York, claim for goods shipped for their account	2,037 95
George J. Brooks, of New York, for goods shipped	1,598 67
The Sun Mutual Insurance Company, of New York, as insurers and assignees of sundry parties, on goods destroyed, and of the charterer, R. M. Corley, of New York, paid	16,859 00
Charles Mann and Ezra H. Winchester, of San Francisco, claim for goods	5,578 28
John Taylor, of San Francisco, for goods lost	1,658 00
Joseph Pollock, of New York, and Leopold Pollock, of San Francisco, naturalized citizens, for goods destroyed	655 75
Abraham S. Rosenbaum, Joseph Brandenstein, of New York; Moses Rosenbaum, of San Francisco, for goods	4,978 25
The Columbian Insurance Company, as insurers and assignees upon vessel and freight of C. and F. Dimon	5,500 00
Upon cargo of J. C. Dayton & Co	4,855 00
Of Hall & Macomber	275 00
Of F. Hortsman & Co	2,000 00
Of Robert Taylor	4,500 00
And of L. McMurray & Co	3,150 00
Coffin, Redington & Co., of New York	3,166 42
Hostetter & Smith, of Pittsburgh, Pennsylvania, for merchandise	3,934 43
W. F. Brittan & Co., for goods	5,325 74
Pacific Mutual Insurance Company, as insurers of goods lost in Tycoon, and assignees of Franklin Carter, of Quincy, Massachusetts	2,400 00
Of J. Hiller & Bro., New York	623 00
Of H. Cohen & Co., of New York	5,200 00
Of Schloss Bros., of New York	300 00
Of W. A. Toole, of New York	2,906 00
Of John Keys, of New York	602 00
Of Frederick Victor and Achiles, of New York	3,030 00
Making a total of	15,121 00

The duly registered American ship Sonora, of 707⅝ tons, whereof John W. Cushing, William Cushing, Nicholas Johnson, Elizabeth Le B. Mills, Thomas Pritchard, and William Pritchard, of Newburyport, Massachusetts, were sole owners, sailed from Hong-Kong, in China, 26th November, 1863, bound to Akyab, in British India, to load with rice or general merchandise, for Europe, under charter-party made by C.
[11] F. Webert & Co., of London; *was captured and burned near latitude 3° north, longitude 101° east, in the Straits of Malacca, on the 26th December, 1863.

The owners claim damages for value of ship, the 30th May, 1864	$55,800 00
Also, for the value of charter of ship when destroyed	33,244 44
The Columbian Insurance Company claim, as insurers and assignees of William Cushing	30,000 00

TEXAN STAR.—Samuel Stevens and John Atkinson, of Boston; George L. Rogers and Samuel B. Pike, of Newburyport, Massachusetts, allege that they were the owners of the American-built bark Texan Star, which they sold on the 9th December, 1863, to March Biddle Currier, of Maulmain, for 70,000 rupees, current in the British East Indies. The ship was registered at Maulmain under the name of Martaban, 707⅝ tons burden, and mortgaged by the purchaser to the memorialists for 80,000 rupees, payable, with interest, at the rate of five per cent. per annum, on the 10th January, 1864.

The ship sailed from Maulmain, in command of Captain Samuel B. Pike, 12th December, 1863, bound to Singapore. On the voyage, 24th December, 1863, the ship was taken by the crew of the Alabama, set on fire, and totally destroyed, with her guns, stores, &c. The mortgagees claim reparation.

GOLDEN RULE.—The Panama Railroad Company, a corporation created under the laws of the State of New York, claim damages for the capture and destruction, by the Alabama, of the bark Golden Rule, of 254$\frac{7}{95}$ tons, registered at New York; said company and David H. Hoadley owning both ship and cargo.

The Golden Rule, on its way from New York to the port of Aspinwall, or Colon, in New Granada, was captured, on the 26th day of January, 1863, by the Alabama, in latitude about 18° north, and longitude 75° west, and, after the removal of a portion of the cargo to the Alabama, was totally destroyed by burning, with the residue of the cargo remaining on board.

The damages claimed by said corporation are for value of the Golden Rule and freight	$16,000 00
And for that part of the cargo belonging to said corporation	1,406 00
Peter A. Whitebury, of New York, master of the vessel, claims for the loss of his clothing, nautical instruments, and other personal effects	850 00
And in behalf of John Cassidy, mate of said vessel, for loss of clothing and nautical instruments, the sum of	200 00
The Commercial Mutual Insurance Company, of New York, claims, as assignee of Wm. H. Knoepfel, for money paid by it on insurance of merchandise destroyed in the Golden Rule	728 00
The Commercial Mutual Insurance Company, the New York Mutual Insurance Company, and the Union Mutual Insurance Company, (all of New York,) claim as assignees and re-insurers of the Orient Mutual Insurance Company, who, as insurers for $4,000 to F. Probst & Co., of New York, of goods destroyed in said ship, had accepted an abandonment thereof, and re-assigned one-half their claim to said claimants, the sum of	2,000 00
Charles W. Bond, of New York, late firm of Jansen, Bond & Co., for goods	3,353 66
The Sun Mutual Insurance Company claim, as insurers and assignees of Le Roy & Co., of Hartford, Connecticut, upon merchandise	700 00
The Columbian Insurance Company, of New York, as insurers upon cargo and assignee of Ribon & Munoz	9,020 00
J. Hochendorf, jr., American merchant at Lima, assignee of Homer & Hochendorf, for merchandise	7,098 61
The Pacific Mutual Insurance Company claim, as insurers of merchandise and assignee of John Keeler, of New York, the sum of	800 00

The ship S. Gildersleeve, of 847 tons, of New York, whereof J. H. Brown & Co., of the city of New York, Silvester Gildersleeve, Henry Gildersleeve, and Cicero Brown, of Portland, Connecticut, were owners, and John McCallun was master, sailed from Sunderland, England, to Calcutta, laden with coals; captured and burned, with its cargo and stores, on the 21st March, 1863, about latitude 12° 10′ south, longitude 34° 55′ east.

The Commercial Mutual Insurance Company, of New York, claim damages as insurers of three-fourteenths of the hull, tackle, &c., of the ship, (valued at $35,000,) for cash paid by them on abandonment of the assured, the sum of	$7,500 00
The Sun Mutual Insurance Company, of New York, claim, as insurers of J. W. Brown & Co., upon their share of the vessel, paid on loss	10,000 00

SHIP BRILLIANT.—Joshua Atkins and Edward Atkins, of Brooklyn, New York, and George Hagar, master mariner, of Boston, Massachusetts, claim that they are the sole owners of the ship Brilliant, of New York, a duly registered American ship, of 839$\frac{71}{95}$ tons, which sailed from New York 13th September, 1862, laden with grain, flour, &c., and bound to London, in which said owners had no other interest than their lien for freight. On the 3d October, 1862, the Brilliant was captured near latitude
[12] 40° north, longitude 50° 30′ west, by the Alabama, and, after being plundered by her officers and crew, was set on fire and totally destroyed.

The owners claim damages as follows:	
For the value of the ship	$75,000 00
For amount of freight	£3,415 9*s.* 8*d.*
B. E. Clark & Co., (Wm. B. Astor and J. B. Hart,) of New York, for goods	$3,211 80

The Atlantic Mutual Insurance Company, as insurers of John A. Atkins & Co., upon the freights	$18,000 00
The New York Mutual Insurance Company	9,245 00
George Hagar, master, for loss of his personal effects and for expenses of return	1,250 00

The bark Olive Jane, whereof Robert Kallock was master, sailed from Bordeaux 24th of January, 1863, bound to New York, and on the 21st February, 1863, about latitude 20° 17′ north, longitude 45° 15′ west, was captured, pillaged, and burned.

The Sun Mutual Insurance Company, of New York, claim damages as insurers and assignees of C. Mellette & Co., and also of C. A. De Vivier, of New York, on merchandise	$767 66
The Columbia Insurance Company claim, as insurers of cargo, assignees of Charles Lord & Co	800 00
Of B. E. Clark & Co., on ship	2,069 00

The Anna F. Schmidt, a ship of 784[illegible] tons burden, registered at New York, whereof Henry B. Trumbly was master, and Charles Williams, of Framingham, George C. Lord and Charles H. Lord, of Boston, Geo. W. Campbell, of Bradford, Moses J. Milliken, of Newburyport, Massachusetts, George Wise, Robert Smith, jr., of Kennebunk, and Moses M. Batter, of Portland, in the State of Maine, were the sole owners, sailed for San Francisco on the 17th January, 1863, and on the 2d July, 1863, about latitude 25° 29′ south, longitude 37° 46′ west, was captured, pillaged, and burned.

The Sun Mutual Insurance Company, of New York, claim damages as insurers and assignees of Van Winkle & Duncan and Daniel Palmer, owners of merchandise destroyed with said ship	$2,050 00
The owners claim damages for her capture and destruction, for the difference between the value of the ship and a charter-party made thereof to Nathaniel Winson & Co., of Boston, and the sums insured thereon, the ship being valued at	30,000 00
And insured (by war-policies) for $22,000	8,000 00
The Washington Insurance Company, of Boston, as insurers and assignees of China Mutual Insurance Company, re-insurance on ship	5,000 00
And of Winson & Co., on cargo and freight of ship	6,560 00
The New England Mutual Marine Insurance Company claim, as insurance, &c., of Charles Williams	$8,000 00
George Lord & Co., advances and captain's effects	10,500 00
On merchandise of Howard & French	1,300 00
On merchandise of F. Price & Co	1,000 00
On merchandise of Thos. C. Lafavor	265 00
On merchandise of E. H. Baker & Co	600 00
Making a total of	26,665 00
Pio Bisagno, Bartolomeo Bisagno, and Luigi Bisagno, of San Francisco, for goods lost	$2,094 30
Metropolitan Insurance Company, New York, as insurers of Nash & Fogg, cargo destroyed	3,300 00
Horton, Hall & Co., Boston	700 00
Manufacturers' Insurance Company, (re-insurance)	5,000 00
Moses Ellis and Philip S. Weaver, of San Francisco, California, for goods lost on board	11,535 92
Levi Stevens, Colin Clark Baker, and Judah Baker, of San Francisco, California, for loss of commissions on goods consigned to them and lost on board, and for collecting general average of ship, (repaired before loss)	3,244 42
Dimon & Hubbard, of Malden, Massachusetts, for losses on board	905 36
Charles W. Bond, of 78 Cedar street, New York, of firm of Janson, Bond & Co., of San Francisco, for merchandise	670 00
Lewis Hecht, of Boston, Jacob Hecht, and Isaac Hecht, of San Francisco, for merchandise lost	391 00

The American ship John A. Parks, duly registered at New York, of 1,040[illegible] tons burden, whereof James A. Cooper was master, sailed from New York February 11, 1863, bound to Montevideo, and was captured, pillaged, and destroyed by fire on March 2, 1863, about latitude 29° 15′ north, longitude 38° 20′ west.

The Sun Mutual Insurance Company, of New York, claim damages as insurers and assignees of Alexander S. Howard and Eldridge F. Rollins, of Boston, on their share of said ship	$6,563 00
And of Nesmith & Sons, of New York, on merchandise destroyed	1,200 00
The Columbian Mutual Insurance Company, of New York, claim as insurers of Walsh, Carver, and Chase, on advances for ship	3,500 00
[13] Of H. Cooper, jr., on ship	3,938 00
Of A. H. Howard, on ship	7,500 00
The Washington Insurance Company, of Boston, as insurers of Peter Cooper upon one-quarter of ship	10,500 00

The ship Emma Jane, of Bath, Maine, of 1,036 tons burden, whereof David C. Magoun, ——— Clapp, and Francis C. Jordan were owners, and F. C. Jordan was master, sailed from Bombay January 6, 1864, in ballast, bound to the port of Anchove for orders, and was captured January 14, 1864, in latitude 5° 6′ north, longitude 76° 10′ east.

The owners claim for value of ship	£10,000 0s.
And for value of charter	5,462 5s.
The Columbian Insurance Company, as insurers of Magoun & Clapp, claim upon ship	$20,000 00
And of C. C. Duncan on vessel	5,000 00

The ship Rockingham, of Portsmouth, 976 tons, whereof Albert L. Jones and Wm. P. Jones were sole owners, sailed from Callao February 24, 1864, Edward Gerrish being master, bound to port in the United Kingdom, to touch at Cork for orders, and laden with guano. On the 23d April, 1864, about latitude 15° 53′ south, longitude 30° 44′ west, was captured and burned.

The Atlantic Mutual Insurance Company, of New York, claim value of ship in their own right as insurers	$40,000 00
And as assignees of William Jones & Son	50,000 00
Making	90,000 00
The Columbian Insurance Company, as insurers of William Jones & Son on ship	$15,000 00

ARIEL.

The Columbian Insurance Company claim damages for loss of cargo of the steamer Ariel, destroyed by the Alabama on the 7th December, 1862, as insurers and assignees of Ribon & Muñoz	$8,500 00

MANCHESTER.

The Columbian Insurance Company claim for loss of ship Manchester, destroyed by the Alabama, 11th October, 1862, as insurers of B. J. H. Trask, jr	$10,000 00
Henings & Gosling, of New York, for wheat destroyed in the ship Manchester	6,646 32
The New York Mutual Insurance Company, as insurers on ship	7,500 00

PALMETTO.

The Columbian Insurance Company claims, for loss of the Palmetto, captured by the Alabama on 3d of February, 1863, as insurers of C. and E. J. Peters, upon freight	$500 00

HIGHLANDER.—The Highlander, Jabez H. Snow, master, sailed from Singapore to Akyab 26th December, 1863.

The Columbian Insurance Company claims, as insurers of E. D. Peters & Co., upon the ship	$15,000 00
Of same on freight	6,000 00
The Metropolitan Insurance Company, of New York, as insurers of Edward D. Peters & Co., of Boston, upon the ship	15,000 00

The Dorcas Prince, of New York, an American vessel of 700 tons, Frank B. Melcher,

master, sailed from New York, for Shanghai, 13th March, 1863, with general cargo, and was captured by the Alabama on the 26th April, 1863, about latitude 7° 30′ south, longitude 31° 30′ west; was plundered and burned, with her cargo and stores.

The Columbian Insurance Company claims, as insurers of N. L. and G. Griswold, on ship	$5,000 00
Ditto on freight	5,000 00
The Atlantic Mutual Insurance Company, of New York, as insurers of N. L. and G. Griswold upon cargo	12,000 00
Ditto of Brooks Bros., on cargo	276 00
Ditto of H. W. Gray, on cargo	750 00
The N. E. Mutual Insurance Company, as insurers of N. L. and G. Griswold, on ship	5,500 00
Ditto, on freight	5,000 00

The ship Louisa Hatch, 853 tons, registered at Rockland, Maine, whereof Wm. Grant was master, and Wm. McLoon and Chas. W. McLoon were sole owners, sailed from Cardiff, for Pointe de Galle, laden with coals; was captured on the 4th April, 1863, about latitude 3° 13′ south, longitude 26° 12′ west, off Fernando de Noronha; the
[14] coal *was put on the Alabama, and the officers and crew landed on that island; the vessel was then destroyed by fire.

The owners claim for the value of the ship	$65,000 00
Loss on freight to Pointe de Galle	15,000 00
Provisions	2,000 00
Chronometer	260 00
Making a total of	82,250 00

CRENSHAW and WAVE CREST.

Peter & Co., New York, claim for grain-bags, destroyed with the Crenshaw, the sum of	$638 80
Same firm, for losses on the Wave Crest, the sum of	1,095 00

The ship "Express," of Boston, 1,073$\frac{2}{95}$ tons, whereof Wm. S. Frost was master. sailed from the Chincha Islands on the 5th March, 1863, laden with guano, and bound for Antwerp, under charter of Seccan & Co., of that city, and Seccan, Valleviano, & Co., of Lima, Peru. On the 6th July, 1863, about latitude 29° south, longitude 31° 40′ west, was captured and burned with cargo and stores, log, register, and mail.

The Washington Insurance Company of Boston claim, as insurers of Richard Jenness, upon ship	$2,000 00
On her freight	4,000 00
Of Daniel Marcy, on ship	6,000 00

THE COURSER.—Schooner registered at Provincetown, 121 tons, whereof Silas S. Youngs was master, and Henry Cook, Sylvanus Cook, Jonathan Cook, Alfred Cook, Samuel Cook, Eleazer Cook, Silas J. Youngs, Isaac F. Mayo, Geo. A. H. Lewis, John H. Mayo, Joseph Mayo, and Thomas Lewis, of Provincetown; John, James, and Leonard McKenzie, of Essex, Massachusetts, were owners, sailed from Provincetown, March 12, 1862, bound on a whaling voyage to the North Atlantic Ocean; was captured near the Island of Flores 16th September, 1862, and burned, with her cargo and stores.

The owners claim, for the value of the schooner, outfit, &c	$12,462 47

WEATHER GAGE.—The schooner Weather Gage, registered at Provincetown, of 100$\frac{2}{95}$ tons, whereof Samuel C. Small was master, and Harvey Cook, Sylvanus Cook, Jonathan Cook, Samuel C. Small, Samuel Cook, Charles H. Dyer, Isaac W. Mayo, Jno. D. Mayo, and Joseph Mayo, of Provincetown; Leonard Ware, Ebenezer Arthur, Henry A. Baker, and Hiram Baker, of Boston; John, James, and Leonard McKenzie, of Essex, Massachusetts, were owners, sailed from Provincetown 4th August, 1862, bound on a whaling voyage to the North Atlantic Ocean, and, on the 9th day of September, 1862, near the Island Coro, was captured by the Alabama, and burned the next day, with her cargo and stores.

The owners claim, for the value of the schooner, outfit, &c	$10,220 50

The schooner Starlight, wherof Samuel Whitman, Seth Whitman, Daniel Eaton Lufkin, and Lemuel Whitman, of Deer Isles, Maine, were owners, sailed from Boston the 7th August, 1862, in ballast, with passengers, for Western Islands. On her return voyage, 2d September, 1862, was captured by the Alabama and burned.

The owners claim, for the value of said vessel, the sum of	$3,500 00
Chalmer S. Dawes, as charterer, and for value of provisions	725 00
Samuel H. Doane, master, for books, clothing, watch, and specie	330 00
Wm. Williams, for chronometer	250 00

The Jabez Snow, registered at Newburyport, of 1,073$\frac{38}{95}$ tons burden, Jabez Snow Franklin Spofford, Henry Darling, Enoch Barnard, Joseph R. Fulsome, of Bucksport' Maine; George H. Peters, Wm. C. Peters, and Joseph B. Ellicott, of Boston, Massachusetts: Henry D. Brookman and John W. Brookman, of New York, sole owners, left Cardiff, Wales, April, 1863, laden with coals, for Monte Video, under command of George W. Guin, and on the 29th May, 1863, latitude 15° south, longitude 34° west, was captured and burned.

George W. Guin, the master, of Bucksport, Maine, claims damages for wearing apparel and personal effects, merchandise belonging to him	$3,500 00
For loss of wages, primage, and profits on goods not issued	3,100 00
Making a total of	6,600 00

The bark Nye, of New Bedford, of the burden of 200 tons, Joseph B. Baker,
[15] *master, sailed from the port of St. Helena on the 25th July, 1862, bound for New Bedford, laden with sperm and whale oil. On the 24th of April, 1863, in latitude 5° south, longitude 32° west, was captured and burned, with her cargo of 425 barrels of sperm and 140 of whale oil.

The New England Mutual Marine Insurance Company claim, as insurers of Daniel Baker, upon catchings on said bark	$700 00
Of Joseph Baker	1,000 00
Of Frederick Howland	650 00

The ship Levi Starbuck, duly registered at New Bedford, of 376$\frac{3}{95}$ tons burden, whereof Edward W. Howland, Thomas S. Hathaway, Caleb Kempton, George Barney, and Cornelius Howland, jr., executors of Cornelius Howland, deceased; George Barney, William A. Gordon, and Wing Russell, all of New Bedford, were owners, and Thomas Mellon was master, sailed from New Bedford October 28, 1862, on a whaling voyage to the North Pacific, and on the 2d November, 1862, in latitude 35° 40′ north, longitude 56° west, was captured and burned by the Alabama, with her outfit and stores.

The owners claim damages to the amount of $229,312.50.

They were insured as follows:

George W. Howland	$13,200 00
Geo. Barney *et al.*, executors	4,800 00
Thos. L. Hathaway	2,000 00
Geo. Barney (Mutual Insurance Company)	1,500 00
William A. Gordon, in Commercial Insurance Company, assignee	1,850 0

The Dunkirk, whereof C. Peters and E. J. Peters, of the city of New York, were owners and Samuel B. Johnson, of Blackhill, Hancock County, Maine, was master, sailed from New York for Lisbon, September 30, 1862, and on the 7th October, 1862, in latitude 40° 23′ north, longitude 54° 30′ west, was captured and burned, with her cargo, &c.

Captain Johnson claims for his share (one-half) of freight, (after deducting $2,000 recovered for insurance on entire freight,) goods, and expenses	$1,514 64
Isaac Sherman and Henry C. Wybert, of New York City, for goods lost in the ship Dunkirk, the sum of	607 60

The ship Benjamin Tucker, of New Bedford, Charles B. Tucker & Co. owners, was captured 14th September, 1862, and burned.

The owners claim for ship, outfit, and oil on board, and for damages by the breaking up of the voyage	$124,000 00

The bark Ocean Rover, of Mattapoisett, sailed 26th May, 1859, on a whaling voyage, and was captured 8th September, 1862, off the island of Flores, and burned.

The owners claim for ship and outfit, oil on board, and damages for breaking up of voyage	$104,000 00

The brig Altamaha, of Sippican, S. C. Luce and others owners, sailed May 14, 1862, on a whaling voyage, and was captured 13th September, 1862, and burned, off the island of Flores.

The owners claim for value of brig and outfit, and damages for breaking up of the voyage, the sum of	$15,450 00

SHENANDOAH.

The following is an abstract of the claims filed in the Department of State by American citizens, native and naturalized, and by corporations organized and doing business under the laws of the States in which they are respectively located, for damages sustained by them as the owners, mariners, freighters, or insurers of duly documented ships of the United States, and as owners, insurers, or otherwise interested in the cargoes of such ships, or in charter-parties for the service of such ships captured and destroyed or appropriated by the officers and crew of the steamer Sea King or Shenandoah.

The bark Delphine, 705$\frac{3}{5}$ tons burden, registered at Bangor, Maine, whereof Eliab Wright Metcalf and Samuel D. Thurston, of Bangor; Phineas Pendleton and Wm. G. Nichols, of Searsport, Maine; Phineas Pendleton, 3d, and Wm. McGilvery, of the same place; Henry Darling, of Bucksport, Maine; Benjamin Carver, H. D. Brookman and John N. Brookman, of New York city, were owners, sailed October 12, 1864,
[16] laden "with machinery and ballast, from Gravesend, bound to Akyab, and was captured December 29, 1864, in about latitude 39° 20′ south, longitude 69° east, and became a total loss.

The owners claim as follows:

For the value of the ship	$56,000 00
For outfit, expenses, and advanced wages	15,000 00
For value of charter for voyage	8,000 00
The master, Wm. G. Nichols, for loss of primage, expenses of self and family in Australia and return, and merchandise	5,100 00

This claim, so far as Wm. McGilvery is concerned, appears to be subject to a deduction for $2,000, received by him on insurance by Columbian Marine Insurance Company, of New York, which that corporation will claim.

The bark Isabella, of 315$\frac{6}{95}$ tons burden, registered at New Bedford, Massachusetts, of which Thomas Knowles, John P. Knowles, Joseph Knowles, Wm. O. Brownell, George Barney, Slocum Allen, John A. Wood, and Thomas H. Knowles, of New Bedford; Deborah D. Goddard, of Boston; Hudson Winslow, of Freetown; James S. Winslow, of Dartmouth; Reuben Nickerson, jr., of Easthaven, all of Massachusetts; Henry Burding and Abner H. Davis, of New York; and Edward D. Mandell, of New Bedford, executor of Edward M. Robinson, were owners; and Hudson Winslow was master, sailed from New Bedford, September 29, 1863, on a whaling voyage, to the Pacific Ocean. On the 26th of June, 1865, while beating through the Behring's Straits toward the Arctic Ocean, and in latitude about 64° 50′ north, was captured, plundered and burned, with her stores and cargo.

The owners claim, for value of bark and outfit	$60,000 00
Oil and whalebone on board	27,765 00
Loss by breaking up of voyage	174,600 00
The New England Mutual Marine Insurance Company claim, as insurers of Hudson Winslow, on outfit and cargo	1,000 00
The Atlantic Mutual Insurance Company, of New York, paid on fire policies on bark and outfit	16,800 00

The bark Aliva, of 573$\frac{80}{95}$ tons, registered at Searsport, Maine, whereof Edward Staples, of Stockton, Maine; Wm. McGilvery, of Searsport; John M. Lane, Joseph Cook, F. and P. Pendleton, Lebbeus Curtis, Wm. F. Black, Woodman Cronin, and Robert Porter of Searsport, and Benj. Carver, of New York city, were owners, and the said Edward Staples was master, sailed from Newport, England, October 6, 1864, laden with railroad iron, and bound for Buenos Ayres; was captured, pillaged, and sunk, October 29, 1864, about latitude 16° 40′ north, longitude 26° 45′ west.

The owners claim, for value of bark and outfit	$68,000 00
For freight under charter-party	15,000 00
The master, Edward Staples, for loss of primage, wages, and personal effects	3,817 43

The bark Susan, of 134 tons burden, registered at Sag Harbor, and enrolled at New York, whereof C. H. H. Meyer, of New York, was sole owner, and F. W. Hansen, master, sailed from Cardiff, Wales, September 26, 1864, laden with coal, and bound for the coast of Brazil, was, November 10, 1864, stripped and sunk.

The owner claims for value of vessel	$12,000 00
And for freight money pending	2,500 00

The bark Edward, of 274$\frac{1}{95}$ tons burden, whereof Thos. Knowles, John P. Knowles, Joseph Knowles, John Knowles, 2d, John P. Knowles, jr., Charles Hitch, and Jonathan Brown, native, and Antoin Joseph, a naturalized citizen, all of New Bedford, sailed from New Bedford, August 2, 1864; was captured December 5, 1864, in latitude 37° 45′ south, longitude 11° 50′ west, about forty miles westward of Tristan d'Acunha, and burned.

The owners claim damages for value of bark, outfit, oil on board, and breaking up of voyage (protesting against diminution thereof by reason of $19,875 received by them upon insurance)	$189,806 00

The bark William C. Nye, 389$\frac{55}{95}$ tons burden, registered at San Francisco, whereof John C. Merrill, D. C. M. Ruer, Alfred Tabbs, Geo. H. Moore, Wm. How, Charles Hare, and P. H. Cooty, of San Francisco were owners, and P. H. Cooty was master, sailed March 27, 1865, from the port of San Pedro, on a whaling cruise, in the Arctic Ocean; was captured by the Shenandoah June 26, 1865, and burned.

[17] The owners claim for value of bark	$35,000 00
Boats and other outfits	20,000 00
Oil on board	7,087 50
Estimated damage in loss of future catching of oil	218,125 00
The Atlantic Mutual Insurance Company of New York as insurers of the Union Mutual Insurance Company of New Bedford, for the risk on ship and outfit	20,000 00

The bark Gipsey, registered at New Bedford, of 110 tons burden, whereof Thomas Mandell and Sophia Ann Howland, of New Bedford; Edward M. Cleveland, of Nantucket; and Edward Mott Robinson, of New York City, were owners, and Orlando G. Robinson was master, sailed from New Bedford May 28, 1862, for the Pacific Ocean, on a whaling voyage; was captured June 26, 1865, in latitude 64° 30′ north, distant five or six miles from the western shore of Behring's Straits, and burned.

The owners claim for value of bark	$20,000 00
For whaling outfit	40,000 00
Oil and bone on board	10,663 75
Value of prospective catchings	49,075 00
The master, Orlando G. Robinson, for merchandise, fins, whalebone, whale teeth, &c	7,211 00
The first mate, John Callen, for whalebone, tobacco, clothing, and instruments	1,200 00
The Columbian Insurance Company of New York, as insurers of bark and outfit	14,000 00
The Atlantic Mutual Insurance Company of New York, insurers of bark and outfit	10,000 00

The ship Hillman, of 382$\frac{5}{95}$ tons burden, registered at New Bedford, whereof William G. Taber, John Hunt, deceased, Henry Tabert, James Arnold, Robert Tuckerman, William J. Rotch, Joseph Brownell, of New Bedford, and Mary E. Gordon, of Brooklyn, New York, were owners, and J. A. Macomber, master, sailed from Honolulu May 2, 1865, on a whaling voyage in the Arctic Ocean; was captured June 28, 1865, within the headlands of Cape East and the North Cape of St. Lawrence Bay, and burned.

The owners claim as value of vessel	$20,000 00
Outfits, $40,000, and oil on board, $10,489.75	50,489 75
Value of reasonable prospective catchings	54,675 00
John A. Macomber, master, for fins, shells, instruments, books, clothing, and expenses	962 00
The Atlantic Mutual Insurance Company of New York, as insurer of sundry owners on ship and outfits	21,500 00
As re-insurers of Union Mutual Insurance Company of New Bedford on ship and outfit	4,750 00

The bark Congress, of 376 tons burden, registered at New Bedford, whereof Gideon Allen, Gilbert Allen, F. E. Stanbury, Joseph Clark, Pardon Tillinghast, Jonathan Smith, Eliza W. Allen, George Homer, and Frederick Homer were owners, and the said F. E. Stanbury was master, sailed from New Bedford June 3, 1863, for the Pacific and Arctic

Oceans; sailed from Honolulu under command of David D. Wood, the original master being sick, for the Arctic Ocean, and was captured June 28, 1865, between the headlands of Cape East and North Cape of Saint Lawrence, and burned.

The owners claim for value of bark and outfit	$56,000 00
Whale oil and bone on board	33,845 00
And for prospective catchings	53,075 00
Daniel D. Wood, master, personal effects, &c	982 00

The ship Isaac Howland, 399$\frac{8}{95}$ tons burden, registered at New Bedford, whereof Edward D. Mandell, Charles R. Tucker, Sylvia Ann Howland, and Thomas Mandell, of New Bedford, and Edward Mott Robinson, of New York City, were owners, Jeremiah Ludlow, master, sailed from New Bedford October 19, 1864, for the Pacific and Arctic Oceans; captured June 28, near the point of Cape East and North Cape of Saint Lawrence, plundered and burned.

The owners claim, subject to abatement for insurance, for value of ship and profit	$65,000 00
For oil and bone on board	48,554 00
And for prospective catchings	53,075 00
The Atlantic Mutual Insurance Company of New York, as insurers upon ship and outfit	16,250 00
And upon catchings	7,750 00
And as re-insurers of the Commercial Insurance Company of New York, on ship and outfit	14,000 00
Jeremiah Ludlow, master, personal effects	710 00

The bark Catherine, of 384$\frac{42}{95}$ tons burden, registered at New London, whereof John Hemstead, James Smith, Thomas W. Williams, Henry P. Havens, Robert B. Smith, and Mrs. Eliza B. Edgar, of New London, and Samuel Willetts and Grinnell, Minturn & Co., of New York, were owners, and William H. Phillips was master, sailed from
[18] Honolulu *April, 1865, for a whaling voyage in the Arctic Ocean; was captured June 26, 1865, in Behring's Straits, off Masenka Bay.

The owners claim for oil about	$18,328 75
James O'Donnell, of San Francisco, fourth officer, for goods, &c., have in catch	3,800 00
The Atlantic Mutual Insurance Company of New York, as insurers of ship and outfit	11,676 00
As re-insurers of Ocean Mutual Insurance Company upon ship and outfit	15,000 00

The bark Waverly, of 327$\frac{8}{95}$ tons burden, registered at New Bedford, whereof David B. Kempton, Peleg Slocum, Frederick Slocum, Stephen N. Potter, (deceased,) William J. Rotch, Benjamin B. Covell, Rudolphus Beetle, and John A. Rodgers, of New Bedford, and Gideon Richmond, of Dighton, Massachusetts, were owners, and Richard Holley was master, sailed from Honolulu April 12, 1865, on a whaling voyage in the Arctic Ocean; was captured June 26, 1865, in Behring's Straits, and burned.

The Atlantic Mutual Insurance Company of New York claim, as insurers of ship and outfits	$31,250 00
Richard Holley, master, personal effects and expenses	1,732 00

The Susan Abigail, of 159$\frac{8}{95}$ tons burden, whereof Shed and Wright were owners, sailed from San Francisco on a whaling voyage April 27, 1865, and was captured and burned in the Auyder Sea.

The owners claim for the brig, outfit, stores, and merchandise on board	$41,123 37
And for estimated season's catch destroyed, and profits of trade in ivory	225,848 37

The bark Covington, of 350$\frac{25}{95}$ tons burden, registered at Bristol and Warren, whereof Charles T. Childs, Shubal P. Childs, Guy M. Fessenden, of Warren, Rhode Island; John L. Jenks, of Edgarton, Massachusetts; Thomas L. Jenks and Samuel Talbot, of Boston; David S. Wilson, Thomas G. Wilson, Henry R. Wilson, and James G. Wilson, of Baltimore, Maryland, were owners, and John L. Jenks, master, sailed November 22, 1864, from Honolulu on a whaling voyage; was captured and burned June 28, 1865, in Behring's Straits.

The owners claim for the value of the bark (less $12,748.75 received upon insurance policies)	$17,251 25
Loss of outfit, stores, and cargo	25,110 25

For prospective catch and profits	$61,506 90
For effects, &c. of John C. Mosher, mate	514 00
Charles Smith Downs, seaman, for share of oil, wages, clothing, &c	889 00
The Atlantic Mutual Insurance Company of New York, as insurers of bark, catch, &c	15,000 00

The D. Godfrey, Samuel W. Hallett, master, from Boston, October 6, 1864, to Valparaiso, with general cargo, burned November 7, 1864, in latitude 6° 25′ ———, longitude 27° 15′ west.

The New England Mutual Marine Insurance Company claim, as insurers upon merchandise on board, of the Ames Plow Company	$863 00

The bark Nimrod, registered at New Bedford, of 340$\frac{77}{95}$ tons burden, whereof William Gifford, of New Bedford, Nathaniel C. Casey, of Nantucket; Nehemiah P. Baker, of Falmouth; Luther Potter, Josiah Sherman, Wanton H. Sherman, and Isaac R. Gifford, of Westport, were owners, and James M. Clark was master, sailed from New Bedford April 15, 1863, bound on a whaling voyage and fitted for forty-eight months; was captured June 25, 1865, off Indian Point, in Behring's Straits, and burned with cargo and stores.

The Atlantic Mutual Insurance Company of New York claim, as insurers of vessel and outfit	$28,000 00
The owners, protesting against any diminution of their damages by reason of the receipt of insurance by them, claim for loss of vessel and outfit, whale oil, and bone on board, and damages by breaking up the voyage	238,280 87
Wellington Weaver, of San Francisco, late first officer, for personal effects, share in the catch of oil and bone, and in prospective catchings	8,500 00

The ship Euphrates, of 364$\frac{43}{95}$ tons, registered at New Bedford, whereof Edward W. Howland, Joseph Grinnell, George Barney, and Cornelius Howland, jr., executors of Cornelius Howland, deceased; George Barney, in his own right; and Frederick S. Gifford, of New Bedford; Abraham R. Gifford, of Westport, Massachusetts; Andrew Howland, of Boston; and Henry Grinnell, of New York, were owners, and Thomas B. Hathaway was master, sailed from Honolulu April 29, 1865, on a whaling voyage; was captured June 21, 1865, near Behring's Straits, and about fifteen miles northeast of Cape Thaddeus, with cargo and stores.

[19] *The owners claim, for value of ship and outfits, oil and whalebone on board	$67,813 50
For damage in breaking up voyage	100,875 00
Of the owners, Joseph Grinnell and Henry Grinnell were insured, and had received payment of their losses to the extent of	9,750 00

The other owners had no indemnity or satisfaction.

The ship Edward Casey, 357$\frac{83}{95}$ tons burden, registered in San Francisco, whereof Charles Hare, of San Francisco, was sole owner, and George D. Baker was master, sailed from San Francisco January 22, 1865, on a whaling voyage. The ship and outfit, having cost $42,982.20, was captured and burned April 3, 1865, in latitude 6° 50′ south, longitude 168° east.

The owner claims, for loss of ship and outfit and breaking up of voyage	$109,582 70

The ship Abigail, 309$\frac{57}{95}$ tons burden, registered at New Bedford, whereof Laren Snow, Oliver Crocker, George O. Crocker, Pardon Tillinghast, of New Bedford, and Ebenezer F. Nye, of Picasset, Massachusetts, were owners, and the said Nye was master, sailed from Yokohama April 13, 1865, on a whaling voyage; was captured and burned May 27, 1865, off Cape Oliver, in Ochotsh Sea.

The owners claim, for bark, outfit, oil on board	$61,543 50
Damages by breaking up voyage	169,849 20
Ebenezer F. Nye, master, for loss of goods on board	12,505 00
James F. Taber, mate, for private effects	610 50

The bark Josiah Swift, 454$\frac{7}{95}$ tons burden, registered at New Bedford, whereof Jireh Swift, jr., Frederick S. Allen, Oliver Crooker, George Crooker, Thomas W. Williams, Pardon Tillinghast, James H. Howland, Abraham Dellano, Allen Case, Joseph Clarke, Nancy S. Billings, of New Bedford, Humphrey H. Swift and William A. Russell, of New York, were owners, and Thomas W. Williams was master, sailed from Honolulu, on a whaling voyage, April, 1865; was captured June 22, 1865, off Cape Thaddeus, in the North Pacific Ocean, and burned.

The owners claim, for damages	$223,587 50
Thomas W. Williams, master, private effects	963 00
James O. Aveline, first mate	180 25

The ship General Williams, 419$\frac{83}{95}$ tons burden, registered at New London, whereof Charles Barnes, Henry R. Bond, Acors Barnes, William H. Barnes, of New London; William Williams and Harriet P. Williams, of Norwich; George C. Benjamin, of Boston, and Grinnell, Minturn & Co., of New York, were owners, William Benjamin, master, sailed from Honolulu December 22, 1864, on a whaling voyage in the Arctic Ocean; was captured and burned June 25, 1862, near the island of St. Lawrence.

The owners claim damages by her destruction, (over and above $44,673.20, net insurance received by them)	$40,503 85
William Benjamin, master	1,215 00
Asa Benjamin, first mate	270 00
The Atlantic Mutual Insurance Company of New York, as insurers of ship, outfit, and catchings	23,792 00

The bark Favourite, 293$\frac{43}{95}$ tons burden, registered at New Bedford, whereof Farman R. Whitwell and Hannah Whitwell, of Fair Haven; Thomas G. Young, of Portland, Maine; Anna E. W. Richardson, of Nunda, and Georgia W. Moore, of Brooklyn, New York, were owners, Thomas G. Young, master, sailed from Kanagawa April 28, 1865, on a whaling voyage in the Arctic Ocean; was captured and burned June 28, 1865, while beating up Behring's Straits.

The Atlantic Mutual Insurance Company claim, as insurers and assignees of the owners, for loss paid on vessel and outfit	$40,000 00
Thomas G. Young, late master, for loss of private effects	1,498 25

THE SCHOONER LIZZIE M. STACEY.

Francis M. Ashton, of Salem, Massachusetts, late an officer of the Lizzie M. Stacey, destroyed by the Shenandoah, near latitude 1° north, longitude 28° west, claims, for loss of wages, books, expenses, and personal injury	$3,050 00

SHIP NASSAU.

Mrs. William C. Paine, of Boston, claims, for her share, one-eighth of the ship Nassau, burned in the Arctic Ocean June 28, 1865	$10,000 00

[20] *THE BARK MARTHA.

Joshua L. Macomber, late master of the bark Martha, of New Bedford, for personal effects, &c	$3,175 00
James Bowden, first mate	700 00
Charles H. Smith, second mate	625 00

SHIP SOPHIA THORNTON.

John W. Thompson, late chief mate of ship Sophia Thornton, of New Bedford, claims, for loss of personal effects, expenses, &c	$467 00

FLORIDA.

The following is an abstract of the claims filed in the Department of State by American citizens, native or naturalized, and by corporations organized and doing business under the laws of the State in which they are respectively located, for damages sustained by them, as the owners, mariners, freighters, or insurers of duly documented vessels of the United States captured and destroyed or appropriated by the officers and crew of the steamer Florida, and as owners, insurers, or otherwise interested in the cargoes of such ships, or in charter-parties for the service of such ships:

The Red Gauntlet, of Boston, a ship of 1,038 tons burden, whereof A. H. Lucas was master and Francis Boyd, of Boston, was owner, sailed from Boston May 22, 1863, laden with ice and general cargo for Hong-Kong, China, a portion of the cargo belonging to said Francis Boyd, and the remaining capacity of the ship, after reserving room for coal for ballast, was chartered to Everett & Co., of Boston, for the outward voyage, for $12,000, in Mexican dollars. On June 14, 1863, in about latitude 8° 30′ north, longitude 34° 40′ west, was captured, the cargo plundered, from day to day, by the officers and crew of the Florida, and the ship and remainder of the cargo burned June 26, 1863, in longitude 47°, latitude 29° north, or thereabouts.

The owner claims, for himself and his underwriters, as follows, viz:

For value of ship and outfit	$56,000 00
For value of part of cargo belonging to him	9,294 79
For value of charter on outward voyage	18,624 44
Including exchange on ———, less value of homeward freight	25,000 00
The Sun Mutual Insurance Company of New York, as insurers of Everett & Co. on cargo	9,000 00
The Atlantic Mutual Insurance Company of New York, as insurers upon cargo of Thomas B. Everett	4,200 00
Same company, as insurers upon cargo of Henry P. Blanchard	1,000 00

The ship Commonwealth, of 1,275⅝ tons burden, registered at New York, whereof George S. McClellan was master, and Nehemiah P. Mann and Nehemiah P. Mann, jr., Adrian J. Mann, of Boston; Messrs. Charles L. Colby, of the city of New York; Gardner Colby, of Boston; Thomas Hastings, Henry Scudder, Thomas M. Hastings, Albert Dunbar, of Brewster, Massachusetts; Frederic Dunbar, of Yarmouth, Massachusetts; George Cogswell, of Bradford; William N. Botson, now deceased, of Boston, and the said George S. McClellan were owners, sailed March 19, 1863, laden with general cargo and Government stores, for San Francisco; was captured, plundered, and burned April 17, 1863, about thirty miles south of the equator, in longitude about 30° west.

N. P. Mann & Co. claim, as owners of one-fourth of ship and freight	$22,250 00
The Metropolitan Insurance Company of New York, as insurers of Dunbar & Colby on freight	2,000 00
George J. Brooks & Co., of New York, for merchandise	1,235 00
Dimon Hubbard, of Malden, Massachusetts	635 50
Thomas Emery's Sons, of Cincinnati, claim, for merchandise and premium of insurance	4,488 20

The Atlantic Mutual Insurance Company of New York claim, as insurers and assignees upon cargo, as follows:

Of E. & H. T. Anthony	$353 00
Of Dunbar, Hobart & Co	4,637 00
Of Hertzog & Co	5,000 00
Of J. B. Newton & Co	2,000 00
Of Zorn & Co	60 00
Of Kennedy & Bell	6,891 00
Of H. W. Bragg & Co	1,141 00
Of W. S. Bancroft	1,000 00
Of Willet C. Ward & Co	2,583 00
Of C. H. Benedict & Co	4,050 00
Of John D. Wing	1,400 00
Of N. Kellogg & Co	397 00
Of Hawley & Co	1,000 00
Of Kelly, Mott & Co	484 00
[21] *Of Charles W. Crosby	1,870 00
Of Robert L. Taylor	4,000 00
Of Roes, Dempster & Co	7,227 00
Of Brewster & Co	1,445 00
Of S. Hausmann	1,600 00
Of Demas S. Barnes & Co	1,200 00
Of J. H. Coghill & Co	3,500 00
Of C. H. Grant & Co	500 00
Of Charles W. Crosby & Co	7,150 00
Of Mitchell, Vance & Co	300 00
Of Kelly, Mott & Co	2,216 00
Making, in all, the sum of	62,044 00
Robert Morrison & Co. claim, for merchandise	$6,394 20

The Pacific Mutual Insurance Company of New York claim, as insurers and assignees upon property, as follows:

Of Morris Speyer	$1,855 00
W. S. Toole	1,100 00
William Seligman & Co	7,500 00
Cornelius Comstock	2,818 00
John Keys	291 00
Making, in all, the sum of	13,564 00

The Sun Mutual Insurance Company of New York claim, as insurers of merchandise in the Commonwealth, and by subrogation to the rights of Josiah Macy's Sons, of New York, for $1,287; and H. Doppman & Co., of New York, for $1,600, making	$2,887 00
The Columbian Insurance Company of New York claim, as insurers upon freight of Dunbar & Colby, $10,000; of same primage, $2,000; of same cargo, $5,000; B. Marche & Brothers, cargo, $428, making	17,428 00
Van Winkle & Duncan, of New York, claim for merchandise lost	893 09
Hostetter & Smith, of Pittsburgh, Pennsylvania, claim for merchandise lost	2,072 09
Coffin, Reddington & Co., of New York, claim for merchandise lost	3,342 63
Murphy, Grant & Co., of New York, claim for merchandise lost	15,288 77
Van Antwerp & Mapol claim, for merchandise lost	714 18
Emanuel Rosenfeldt and Jacob Rosenfeldt, of New York City, claim for merchandise	18,744 96
J. Heller & Brothers, at New York, and M. Heller & Brothers, at San Francisco, (one firm,) claim for merchandise	4,008 24
James de la Montanya, of San Francisco, claims for merchandise	1,375 15
Jacob Zack, of San Francisco, claims for loss	1,253 96
John Taylor, of San Francisco, claims for goods	904 88
John Young Hallock, Miles B. Carpenter, Harry C. Parker, and Christian Christiansen, of San Francisco, claim for goods lost	2,948 80
David Nichols Hawley, Walter Nichols, and George Thos. Hawley, of San Francisco, claim for goods lost	8,496 19
Thomas Day, of San Francisco, claims for goods	5,316 69
Charles William Armes, George Willis Armes, and Richard B. Dallahu, of San Francisco, claim for goods lost	1,903 61
Joseph Pollock, of New York, and Leopold Pollock, of San Francisco, claim for goods destroyed	253 80
Edward Burke, Benjamin and Wm. Franklin Whittier, of San Francisco, claim for goods destroyed	1,745 94
H. Cohen & Co., of New York and San Francisco, claim for merchandise	5,222 35
John E. Louer, of New York, claims for goods lost	474 18
William Heller, of New York, Louis Sachs and Martin Sachs, of San Francisco, California, claim for goods lost, (subject to reduction of $4,192 for insurance)	9,683 00
The New England Mutual Marine Insurance Company claim, as insurers upon ship Commonwealth, of Henry Scudder & Co	5,000 00
Of Dunbar and Colby	17,500 00

The American ship Jacob Bell, of 1,380$\frac{56}{95}$ tons burden, registered at New York, whereof Charles H. Frisbie was master, and Abril A. Low, Josiah O. Low, Edward H. R. Lyman, and Harriet W. Bell, of New York City, Susan D. Brown, of Princetown, and Frederick F. Cornell, of Somerville, New Jersey, Frederick L. Washburne, of Boston, Edward King and Wm. H. King, of Newport, Rhode Island, were sole owners, sailed from Foochow, China, November 8, 1862, with a cargo for New York; was captured and burned, with the cargo, February 12, 1863, in latitude 24° north, longitude 65° 58′ west, by the Florida.

A. A. Low and Brothers claim, as owners and assignees of the ship and cargo, as follows:

For value of ship, ($10,000 only insured)	$22,783 00
Merchandise, (on which $45,000 insurance)	94,922 30
[22] *The Pacific Mutual Insurance Company claim, as assignees of A. A. Low & Brothers, on merchandise	$10,000 00
The Atlantic Mutual Insurance Company of New York claim, as insurers upon cargo of Jacob Bell, and assignees of Pickering, Winslow & Co., of Boston	$1,600 00
Of Williams and Hall, Boston	5,600 00
Young and Emmons	9,000 00
Bercklin and Crane	8,312 00
Weston and Grey	93,563 00
Frothingham and Bailey	3,000 00
Oliphants, Son & Co	3,808 00
Amounting to	124,883 00

The Commercial Mutual Insurance Company of New York claim, as insurers of ship and cargo, and assignee of A. A. Low and Brothers on three-twentieths of hull, &c	$17,500 00
Mrs. Martha N. Williams, of Utica, New York, claims for furniture, books, and clothing, and other personal effects, (in gold)	1,653 18
Charles W. Johnson, minor son of John W. Johnson, American missionary at Swatow, claims, for clothing, &c., (in gold)	200 00
The Sun Mutual Insurance Company of New York claim, as insurers and by subrogation to the rights of sufferers by loss of the Jacob Bell	22,119 00

The Oneida, an American ship of 420$\frac{6}{95}$ tons burden, duly registered at New York, whereof Thomas S. Hathaway, of New Bedford, was sole owner, and Jesse F. Potter was master, sailed from Shanghai, January 24, 1863, with a cargo partly as freight and partly on owner's account, and was captured April 24, 1863, in latitude 1° 40′ south, longitude 29° 10′ west, by the Florida, pillaged and burned, with cargo and stores.

The owner claims damages as follows:

For losses on vessel, valued at $25,000, deducting amount paid by underwriters, $15,000—less premium of insurance, $1,802—$13,198, making loss on ship	$11,802 00
For loss on cargo, after deducting the sums paid by underwriters, less premium	73,542 24
Loss on freight list, after deductions	1,294 37
The Metropolitan Insurance Company of New York claims, as re-insurers and assignees of the Baltimore Marine Insurance Company, on the cargo	5,000 00
The Washington Insurance Company of Boston claim, as re-insurers of the New York Mutual Insurance Company, upon cargo, of Thos. S. Hathaway	5,000 00
The Pacific Mutual Insurance Company claim, as insurers of profits on cargo of Thomas S. Hathaway	10,000 00
The Sun Mutual Insurance Company of New York claims, as insurers of cargo	42,179 00
The Columbian Insurance Company of New York claim, as re-insurers of Sun Mutual Insurance Company, on cargo	30,000 00
The New England Mutual Marine Insurance Company claims, as insurers and assignees of Thos. S. Hathaway, on the profits of the ship	20,000 00
As re-insurers of Mercantile Mutual Insurance Company	3,300 00

The American ship Star of Peace, of 941$\frac{39}{95}$ tons burden, duly registered at Boston, whereof Charles Hill and Charles F. Hill, of West Roxbury; John Currier, jr., of Newburyport, Massachusetts; and Wm. Lambert, of Portsmouth, N. H., were the sole owners, and Francis M. Hinckley was master, sailed from Calcutta December 8, 1862, with cargo, bound for Boston, and was captured by the Florida, March 6, 1863, in latitude 15° north, longitude 54° west, plundered, and burned, with remaining cargo.

The owners claim the value of the ship and outfit, $56,500; for freight and cargo, $27,384	$83,884 00
The Washington Insurance Company of Boston claim, as insurers and assignees of Charles Hill, on ship	6,000 00
Of B. H. Lisbee, upon profits on property of ship	8,000 00
Henry Dupont, Eleuther Dupont, Lammont Dupont, and Eugene Dupont, of Wilmington, Delaware, claim for cargo	22,000 00
The Commercial Insurance Company of New York claim, as insurers and assignees of Curtis and Peabody, of Boston, upon merchandise	10,000 00
As re-insurers of the Orient Mutual Insurance Company of New York	3,815 00
The Pacific Mutual Insurance Company of New York claim, as insurers and assignees of E. J. Dupont, De Nemours & Co., of Wilmington, on merchandise	5,000 00

The Sun Mutual Insurance Company of New York claim, as assignees or subrogated to the rights of parties damaged by the loss of the ship, as follows:

Curtis and Peabody, of Boston, upon profits on merchandise	$8,000 00
B. H. Silsbee, upon merchandise	8,652 00
E. J. Dupont, De Nemours & Co., of Wilmington, Delaware	15,000 00
The Manufacturers' Insurance Company of Boston, (on re-insurance)	10,000 00
In all	41,652 00

[23] *The Columbian Mutual Insurance Company of New York claim, as insurers and assignees of Charles F. Hill, upon freight and vessel. $10,000 00
The Atlantic Mutual Insurance Company claim, as insurers and assignees of J. S. Farlon & Co., Hiram Hutchinson, Young & Emmons, J. G. Wild, and W. H. Goodwin, T. Salter, Frederick Dan, Dana & Co., George M. Baupond, and W. C. Codman, in all 109,749 00
The New England Mutual Marine Insurance Company of Boston claim, as insurers of John S. Farlon & Co 2,500 00
As re-insurers of China Mutual Insurance Company 10,000 00

The ship Electric Spark, of Philadelphia, of 810 tons burden, whereof Wm. J. Taylor, of Philadelphia, was owner, and John C. Graham was master, sailed from New York July 9, 1864, bound for New Orleans, with a full cargo; was captured by the Florida, July 10, 1864.

The owner claims for the value of the vessel, her outfit and coal $166,000 00
Edward Anthony, H. T. Anthony & Co., claim for merchandise 1,708 51
The Pacific Mutual Insurance Company of New York claim, as insurers upon cargo 48,153 00
The Commercial Mutual Insurance Company of New York, as insurers upon cargo 350 00
The Pacific Mutual Insurance Company of New York claim, as insurers and assignees of Isaac Hobart, of New York, on cargo 48,153 00

The Columbian Insurance Company of New York claim, as re-insurers of Mutual Insurance Company on cargo $40,000 00
Of J. R. Bassett, on cargo 900 00
40,900 00

Samuel Perry, Charles S. Perry, and S. B. Potter, claim for merchandise lost $2,455 09
Tuthil, Miller & Co., of New York, claim for merchandise lost 898 32

The ship Avon, of Boston, of 946$\frac{44}{95}$ tons burden, duly registered at Kennebunk, whereof Hartley Lord and Henry C. Lord, of Boston; Daniel Cleares and John W. Deering, of Saco; George Wise and M. C. Matting, of Kennebunk, Maine; and Alfred Howes, of Dennis, Massachusetts, were the sole owners, and the said Alfred Howes was master, was laden with a cargo at Howland's Island, in the Pacific Ocean, for Queenstown, Ireland, for orders, and thence to a port of discharge; she sailed from Howland's Island, December 31, 1863, and was captured by the Florida, March 29, 1864, plundered, and burned on the next day, with her cargo.

The owners claim for value of the vessel, $80,000 and for freight on charter-money, $50,000, making $130,000 00
Alfred Howes claims for loss of primage, money, chests, instruments, &c. 3,000 00
And H. C. Flinn, mate, for wearing-apparel, &c 500 00
The Sun Mutual Insurance Company of New York claim, as insurers, and by subrogation to the rights of Hartley, Lord & Co 9,000 00
The Columbian Insurance Company of New York claim, as insurers upon cargo of Gliddon and Williams 7,000 00

The ship Crown Point, of 1,098$\frac{82}{95}$ tons burden, duly registered at the port of New York, whereof John N. Grist was master, sailed from New York on the 9th of April, 1863, bound for San Francisco, and on the 13th of May, 1863, about seventy miles northeast from Pernambuco, was captured and burned, with her cargo, by the crew of the Florida:

Fuller, Lord & Co., of New York, claim, for merchandise lost $5,282 28
S. Morris, Locke & Montague, claim for merchandise 1,675 74
The Commercial Mutual Insurance Company of New York claim, as insurers and assignees of John Chadwick, of New York, on merchandise lost 2,000 00
And of J. L. Adams, of New York, on merchandise lost 2,800 00
The Atlantic Mutual Insurance Company of New York claim, as insurers of cargo, and assignees of Searles & Williams, $315; Weis, Keller & Co., $4,162; Brewster & Co., $625; C. Floyd Jones, $522; Ross, Dempter & Co., $2,137; J. B. Newton & Co., $1,000; U. S. Bancroft, $550; Stephen Prichard, $3,000; Scholle Brothers, $2,600; Kelly, Mott & Co., $854; Rob. L. Taylor, $1,200; R. W. Ropes & Co., $300; J. H. Coghill & Co., $1,780; Eugene Kelly, $21,499; E. N. Kellogg & Co., $812; Geo. Howes & Co.,

$8,000; Fleischmann & Cohn, $176; S. Straus, Bros. & Co., $8,500; Freeman & Simpson, $1,300; Charles W. Crosby, $2,091; Underbill & Co., $2,091; making, in all, the sum of	$63,453 00
William Ward Peck, of Brooklyn, New York, claims for goods lost	1,091 68
Dimon Hubbard, of Malden, Massachusetts, claims for merchandise lost	1,308 98
George J. Brooks & Co., of New York, claims for merchandise lost	415 91
Coffin, Reddington & Co., of New York, claims for goods lost	2,906 92
The Pacific Mutual Insurance Company of New York claim, as insurers and assignees of John Keys, of New York, upon cargo	198 00
[24] *Thomas Emery's Sons, of Cincinnati, for merchandise lost	3,534 30
The Metropolitan Insurance Company of New York claims, as insurers and assignees of Roberts Morrison & Co., on cargo	1,700 00
The Sun Mutual Insurance Company of New York claim damages by loss of Crown Point, as insurers of merchandise subrogated to Steinway & Sons, for	$375 00
And J. M. & J. N. Plumb, all of New York	5,244 00
In all	5,619 00
The Columbian Insurance Company of New York claim, as insurers of freight of Henry Cook	$15,000 00
On cargo of Neustadter Bros	4,100 00
L. P. Rose	621 00
Clark & Wilber	3,254 00
L. McMurray & Co	900 00
Holmes, Goodwin & Co	7,250 00
Dunbart, Hobart & Co	2,162 00
Clarke Wilber	1,272 00
Making	34,559 00
Van Winkle & Dunn, of New York, claim for merchandise lost	$168 77
Coffin, Reddington & Co., of New York, claim for merchandise lost	2,906 92
J. Heller & Bros., of New York, and M. Heller & Bros., of San Francisco, claim for goods lost	7,378 59
Lysander Button, of New York, assignee of Robert Blake, of the same place, and in his own right, claims for merchandise lost	1,137 25
James de la Montanya, of San Francisco, claims for merchandise lost	5,590 43
The New England Mutual Marine Insurance Company, of Boston, claims as insurers and assignees of F. Pierce & Co., on property lost	2,500 00
Of Curtis Peabody, on vessel	22,500 00
On re-insurance of Manufacturers' Insurance Company	3,000 00
John Young Wallach, Miles B. Carpenter, Henry C. Parker, and Christian Christianson, of San Francisco, claim for goods lost	1,772 14
David Nichols Hawley, Walter Nichols Hawley, and George Thomas Hawley, of San Francisco, claim for goods lost	6,255 03
John Wesley Britton, Alexander Dunbar, McDonald Kimball, and C. Eldridge, of San Francisco, claim for goods lost	2,491 57
The California Mutual Marine Insurance Company, of San Francisco, claim, as insurers of goods lost, and as assignees of Camerons, Whittier & Co	3,398 30
And J. R. Coghill & Co	350 00
D. J. Oliver	6,637 00
Joseph Pollock, of New York, and Leopold Pollock, of San Francisco, claim for goods destroyed	932 28
Abraham S. Rosenbaum, Joseph Brandenstein, of New York, and Moses Rosenbaum, of San Francisco, claim for goods lost	6,758 20
H. Cohen & Co., of San Francisco, claim for merchandise lost	5,685 74
John E. Louer, of New York, claims for goods lost	384 00
William Heller, of New York, Louis Sachs and Martin Sachs, of San Francisco, California, claim for goods lost	9,604 61
David Alexander Sermisen, Robert Seckin Sermisen, and Daniel Bussier Phillips, of Brooklyn, New York, claim for goods lost	307 00

The American schooner Aldebaran, of 189$\frac{1}{4}$ tons burden, duly enrolled at the port of Brookhaven, and afterward registered at the port of New York, whereof Nehemiah Hand and Robert W. Hand, of Setauket, New York, were the sole owners, and the said Robert W. Hand master, sailed from New York February 27, 1863, laden with a general cargo, and bound for Maranham, and was captured March 13, 1863, about latitude 29° 16′ north, longitude 51° 10′ west, by the Florida, plundered, and burned. The cargo

was certified to belong to Packenham & Beattie, English merchants at Maranham, and was insured in London.

The owners claim, for value of the vessel	$20,000 00
Stores	500 00
Sail and sail-cloth	1,698 85
Wages advanced	160 00
Master's personal effects	738 00
Expenses coming home from Scotland	450 00
Other expenses	70 00
In all	24,556 85

The ship Southend Cross, of Boston, whereof Benjamin P. Howes was master, sailed from Bella Vista, Mazatlan, in the Gulf of California, on the 2d March, 1863,
[25] *laden with a cargo for New York. On the 6th June, 1863, she was plundered and burned by the Florida.

The New England Mutual Marine Insurance Company claim, as insurers of Baker & Morrell, on ship	$30,000 00

The brig William C. Clark, of Boston, of 328 tons burden, whereof Benjamin R. Redman was master, sailed on June 3, 1864, from Machias, bound, with cargo, for Matanzas. On the 17th of June, 1864, in latitude 30° 5′ north, longitude 64° 30′ west, she was captured by the Florida.

The New England Mutual Insurance Company claim, as insurers on said brig, of Pendleton & Rose	$5,000 00

The schooner Rienzi, of Provincetown, Massachusetts, whereof Gideon Bowley and Joshua E. Bowley, of Provincetown, were owners, sailed from Provincetown June 1, 1863, on a whaling voyage in the Atlantic, and was captured by the Florida, on July 8, 1863, about seventy miles southwest of Martha's Vineyard, and burned, with twenty barrels of oil on board.

For which vessel, stores, and oil the owners claim damages	$8,487 00

The bark Lapwing, of New York, of 590$\frac{14}{95}$ tons burden, duly registered at the port of Boston, Massachusetts, whereof Eben Bacon and William B. Bacon, of West Roxbury, Massachusetts, and Daniel G. Bacon, of New York City, were the sole owners, and James Bolger master, sailed from Boston, March 9, 1863, laden with coal, provisions, and other merchandise, for Batavia and Singapore. On the 28th March, 1863, about latitude 31° 31′ north, longitude 32° 30′ west, was captured by the Florida, and became a total loss.

The Atlantic Mutual Insurance Company, of New York, claim, as insurers and assignees of D. G. & W. B. Bacon	$30,000 00
And on $\frac{25000}{33875}$ of certain merchandise belonging to the same parties	25,000 00
Making in all	55,000 00

GEORGIA.

The following is an abstract of claims filed in the Department of State for the capture and destruction of duly registered and documented vessels of the United States, by the owners, mariners, freighters, and insurers of such vessels, and of the cargoes thereof, or otherwise interested in such cargoes, or in charter-parties for the service of such ships, which ships and cargoes were captured and appropriated or destroyed by the officers and crew of the Georgia, formerly called the Japan, a British vessel, fitted out and manned in British ports.

The Constitution, of 997$\frac{85}{95}$ tons, a ship registered in the port of Philadelphia, whereof Joseph Welsford, of New York City, was sole owner, and Joseph Webster master, sailed from Philadelphia April 27, 1863, laden with coal and bread for Shanghai, China; was captured June 25, 1863, near the island of Trinidad, in latitude 20° 30′ south, longitude 29° 16′ west, plundered and kept by the captors.

The Mercantile Mutual Insurance Company, of New York, claim, as insurers upon the said ship and upon freight	$12,500 00
The Columbian Insurance Company, of New York, as insurers upon ship and freight	10,000 00
As insurers of Joseph Webster on cargo	3,500 00

The ship Bold Hunter, of 797$\frac{6}{95}$ tons burden, registered at the port of Charlestown and Boston, whereof Paul Sears and Reuben Hopkins, of Boston; Rowland H. Crosby, of West Cambridge; James Smith, of Cambridgeport; Alexander H. Childs, of Barnstable; Solomon Taylor, of Yarmouth; and William M. Batson, of New Orleans, were owners; Rowland H. Crosby, master, sailed from Dundee September 10, 1863, laden with coals, and bound for Calcutta; was captured October 9, 1863, about latitude 19° north, longitude 20° 35′ west, pillaged, and burned.

The owners of fifteen-sixteenths of the ship claim, for the value of their interest	$50,625 00
The Washington Insurance Company, of Boston, as insurers of Grace Batson, on ship	3,000 00
The Sun Mutual Insurance Company, of New York, as insurers of ship and freight	7,000 00
The Columbian Insurance Company, of New York, as insurers upon ship	16,000 00

The ship Dictator, of 1,293 tons burden, registered at New York, whereof Charles R. Given was sole owner, sailed from Liverpool April 6, 1863, bound to Hong-
[26] * Kong, China; was captured and burned April 25, 1863, in latitude 25° north, longitude 21° 50′ west.

The owners claim, for value of ship and outfit	$90,390 00
For value of freight	17,180 00

GOOD HOPE.

Jasigi Goddard & Co., of Boston, claim, for the destruction of the bark Good Hope, the value of the vessel, outfit, and cargo, and damages for breaking up of voyage	$110,000 00

No. 2.

Lord Stanley to Sir F. Bruce.

FOREIGN OFFICE, *November* 30, 1866.

SIR: I transmit to you herewith copy of a note which I have received from the United States minister at this court,[1] inclosing copy of a dispatch from Mr. Seward, in which he again brings before Her Majesty's government the claims of United States citizens against Great Britain, on account of losses inflicted on American commerce by cruisers of the so-called Confederate States during the late civil war.

In regard to the date of this note, it is necessary that I should explain that, on its receipt, I stated verbally to Mr. Adams the impossibility of replying to it without consulting my colleagues, and the consequent probability that my answer must be delayed for some weeks.

The claims in question are now, for the first time, brought under the notice of Her Majesty's present advisers; and the length of time which has elapsed since the termination of the civil war justifies the hope that they may be dispassionately considered on both sides.

It is, therefore, with no desire to revive a controversy which has been carried on at great length, and in which every argument bearing on the subject has been advanced and discussed, but with a view to facilitate the impartial examination of the grounds on which these claims are based, that Her Majesty's government feel bound to notice expressions and statements in Mr. Seward's dispatch which they consider unsupported by evidence, and which, in justice to their predecessors in power and to the honor of the country, they cannot allow to pass unexamined.

And, first, in regard to the assertion made at the commencement of

[1] No. 1.

the dispatch, that "the Sumter, the Alabama, the Florida, the Shenandoah, and other ships of war were built, manned, armed, equipped, and fitted out in British ports, and dispatched therefrom by or through the agency of British subjects," and "were harbored, sheltered, provided, and furnished, as occasion required, during their devastating career, in ports of the realm, or in ports of British colonies, in nearly all parts of the globe."

It can scarcely be necessary, after the protracted controversy that has taken place on this subject, to enter minutely into the history of the several vessels mentioned. It must have escaped Mr. Seward's recollection that the Sumter did not proceed from a British port, but was an American vessel, and commenced her career by escaping from the Mississippi. With regard to the Alabama, the Florida, the Shenandoah, and the Georgia, (the other vessels mentioned in the schedule of claims,) they were, undoubtedly, of British origin. But the United States Government will hardly contend that the mere fact of a vessel having been built in the port of a foreign power, or having been originally dispatched therefrom, can of itself render the government of that country responsible for the use which may be made of such vessel after it has passed from their control.

The Alabama was, when she escaped from England, wholly unarmed and unequipped as a vessel of war. She received her armament and warlike equipment, her commander and crew, in Angra Bay, Azores, a possession of the Crown of Portugal, where the British Government could not have exercised any jurisdiction or control over her proceedings, even if they had had the opportunity of so doing.

The Florida, under her original name of Oreto, left England unarmed and unequipped; but suspicion having attached to her, she was seized, and proceedings were instituted against her in the British admiralty court at Nassau, which failed for want of proof, and she was eventually equipped as a confederate cruiser in the port of Mobile, at that time in the occupation of the confederates.

The Shenandoah left England unobserved, and therefore un-
[27] questioned, and, for * anything that had transpired, on a legitimate voyage, and was only armed, equipped, and manned as a vessel of war off Funchal, a possession of the Crown of Portugal. The first intimation which was received of her proceedings was from Her Majesty's consul at Teneriffe, reporting the transfer of crew and armament to her from the Laurel, at the Desertas, off Funchal. Mr. Adams's letter on the subject was dated the 18th of November, 1864, at which time she had already commenced her depredations. This fact appears from the dispatch from the United States consul at Rio de Janeiro, of which a copy was forwarded to Earl Russell by Mr. Adams on the 7th of April, 1865.

The Georgia escaped inquiry in a similar manner, and was equipped, manned, and armed off the coast of France, and presumably in French waters, but unquestionably not within the jurisdiction of the British Crown. She sailed from the Clyde on the 2d of April, 1863, having cleared for Alderney; Mr. Adams's letter, stating that she was intended for a cruiser, was not received until the 8th of April, the very day on which, as was subsequently shown, she was receiving her armament off the French coast. Instructions were sent to the governor of Guernsey, but she proceeded to Cherbourg without touching at the Channel Islands.

As regards the reception of these vessels in British ports, it must be remembered that when they appeared in those ports they did so in the

character of properly commissioned cruisers of the government of the so-styled Confederate States, and that they received no more shelter, provision, or facilities than were due to them in that character. For a recognized belligerent has a right to expect in the ports of a neutral power the same degree of hospitality as is conceded to its antagonist, subject to such restrictions as may be indifferently imposed on both; and it has never been alleged that greater freedom of intercourse was allowed to, or that less restrictions were imposed on, the cruisers of the confederate than on those of the United States in British ports in any quarter of the globe. The instructions issued by the British Government to its civil, naval, and military authorities, with which the Government of the United States are well acquainted, sufficiently establish this fact. Nor can it be said that those instructions were drawn up in an unfavorable spirit to the United States. The prohibition to bring prizes into British ports, and the limit placed on the supply of coal, told principally against the confederate ships, and prevented them from using British ports as their basis of operation.

The treatment of these vessels was therefore no more than the legitimate consequence of the state of civil war which existed in America, and which was recognized by Her Majesty in her proclamation of neutrality.

On the subject of this proclamation, Mr. Seward proceeds to make remarks which Her Majesty's Government cannot admit to be justified by the facts. They have never as yet met with any refutation of the statement contained in the judgment of the Supreme Court of the United States, and already quoted by Lord Russell in his note to Mr. Adams of May 4, 1865, that "this greatest of civil wars was not gradually developed by popular commotion, tumultuous assemblies, or local unorganized insurrections. However long may have been its previous conception, it nevertheless sprang forth suddenly from the parent brain, a Minerva in the full panoply of war. The President was bound to meet it in the shape it presented itself, without waiting for Congress to baptize it with a name, and no name given to it by him or them could change the fact." Her Majesty's government cannot understand how, in the face of such a conclusion declared by the highest judicial authority of his country, and in direct contradiction with the action of the government of which he is a member, Mr. Seward can characterize a contest, which he has at the commencement of his dispatch termed "a civil war," as "a domestic disturbance, which, although it had severe peculiarities, yet was, in fact, only such a seditious insurrection as is incidental to national progress in every state."

Her Majesty's Government find it also laid down in the judgment above quoted, that "the proclamation of blockade is itself official and conclusive evidence to the court that a state of war existed which demanded and authorized a recourse to such a measure under the circumstances peculiar to the case. Again, in the judgment of the District court of Columbia on the Tropic Wind, given June 17, 1861, it was ruled that the facts of the secession of the Southern States, "as set forth by the President, with the assertion of the right of blockade, amount to a declaration that civil war exists; that blockade itself is a belligerent right, and can only legally have place in a state of war." Her Majesty's government are therefore at a loss to conceive how the term "intervention" can be applied to a proclamation which did no more than acknowledge a state of war first recognized by the President of the United States himself, and which was issued with the express

purpose of warning Her Majesty's subjects from any participation in the conflict.

[28] *Mr. Seward's argument that the declaration of British neutrality tended to encourage and create a civil war which would not otherwise have extended beyond the character of a local insurrection can scarcely be better met than by a reference to the legal decisions above mentioned. In opposition to the opinion he expresses, that the proclamation was unnecessary and premature, it may be justly urged that Her Majesty's government had to provide at a distance for the lives and interests of British subjects on or near the seat of war; that they had to consider the rapidity with which events were succeeding one another on the American continent, the delay which must elapse before intelligence of those events could reach them, and the pressing necessity for definite instructions to the authorities in their colonies and on their naval stations near the scene of the conflict. They had, as Lord Russell has stated, but two courses open to them on receiving intelligence of the proclamation of blockade: namely, either that of acknowledging the blockade and proclaiming the neutrality of Her Majesty; or that of refusing to acknowledge the blockade, and insisting upon the right of Her Majesty's subjects to trade with the ports of the South, where the Government of the United States could exercise no fiscal control at that time.

Of these alternatives it is hardly open to question that that which they pursued was at once the most just and the most friendly to the United States.

It is only necessary to add, that before the proclamation was issued seven of the States of the Union had declared their secession, and that they possessed a formally constituted government which carried on the administration in a regular manner, which had possessed itself, in some cases by force, of the fortified posts within its territories, and which had proclaimed its intention of issuing letters of marque.

Before the intelligence of the course adopted by Her Majesty's government could reach America, the legislatures of three more States had provisionally declared their adhesion to the confederation thus established; upward of 100,000 militia and volunteers had been called out by the President of the United States, active measures had to be taken for the defense of the capital, military and naval preparations were hurrying on, a repetition on a much larger scale of the collisions which had already taken place between the opposing forces was imminent, the blockade of the southern ports had actually commenced, and the right of search and capture had already been exercised over British vessels.

Taking these circumstances into consideration, it cannot be admitted that the recognition of the insurgent States as belligerents was premature, or that their insurrection was thereby encouraged; nor can it be supposed that the British government could refuse to the Confederate States that belligerent character which the United States themselves implicitly granted and subsequently allowed to them.

But if Mr. Seward means to base the present claims on the ground that the British government should, while acknowledging the blockade, have awaited the arrival of a confederate ship of war in British ports before admitting the possession by the Confederate States of a ship of war, and therefore their right to be treated on the high seas as a belligerent power, a reference to dates will show that the question would have been raised, on the arrival of the Sumter at Trinidad, and of the Nashville at Southampton, some months before Mr. Adams laid his

first complaint against the vessels mentioned in the summary of claims. It is difficult to see what injury the United States Government can allege, or what redress they can claim, on this score.

Still more difficult is it to understand the process of reasoning by which the acts of British subjects in furnishing assistance and supplies to the Southern States can be traced to the issue of the proclamation. Undertakings of this nature in favor of either of the belligerents were equally in contravention of its terms, and those who engaged in such enterprises did so at their own risk. The United States, whose communication with Great Britain was uninterrupted, received assistance of this illicit nature to a very much larger extent than their antagonists.

Mr. Seward goes on to say that, "when the municipal laws of Great Britain proved, in practical application, to be inadequate to the emergency, the British nation omitted, for various reasons, which seemed to the United States insufficient, to revise those laws."

To this statement a simple answer may be given. That the foreign-enlistment act, like every other enactment, is liable to evasion, and that it was, on more than one occasion, successfully evaded, no one has ever attempted to deny. But, looking at the nature of the evasions which actually occurred, it must be asked whether these could have been prevented by any practicable amendment of the law? It was not from want of legal power in the authorities, nor from disinclination to use that power, but solely from the deficiency of evidence, that the [29] Florida was not detained in England, and that, *when subsequently seized at Nassau, she was released by the authorities there. In the case of the Shenandoah and Georgia no steps could be taken, because no information was given of their designs until they had escaped from British jurisdiction. As regards the Alabama, the case, viewed in this respect, appears still stronger. The law would, in the opinion of Her Majesty's government, have justified her detention; that detention was actually decided upon; and it was only in consequence of an unexpected stratagem that she succeeded in escaping before orders for that purpose arrived. To whatever cause her escape may be attributable, it did not take place in consequence of any want of stringency in the act.

Nor after that unfortunate occurrence were the British government unwilling to respond to Mr. Adams's appeal for more effective measures to prevent such proceedings. They answered it by a proposal for a simultaneous revision of the law of both countries. As the opinion of the United States Government, expressed in reply, was to the effect that their own law was not in need of amendment, it is to be presumed that a complete assimilation of the British act to that law was all that they expected or desired. Yet the British law is substantially identical with that of the United States, with the exception of two provisions, the insertion of which, whatever may be their value in other respects, would have been wholly ineffective to prevent the particular infractions of neutrality complained of. The first of these provisions requires that the owners or consignees of armed vessels sailing out of the ports of the United States, and belonging in whole or in part to citizens thereof, shall give security to double the value of the vessel and cargo that such vessel shall not be employed by them to cruise or commit hostilities against any power with which the United States are at peace. The second empowers the collectors of customs to detain any vessel manifestly built for warlike purposes, and about to depart the United States, of which the cargo shall principally consist of arms and munitions of

war, when there is just ground for suspecting that she will be employed against a friendly power, until a definite decision can be come to on the case, or security given as above. It is sufficiently evident that these two articles would, at the utmost, only have served to enhance the price of any vessel against which they might have been enforced. But, in addition to this, it may be observed that the terms in which they are framed would have rendered them inapplicable to the vessels whose depredations are now complained of, none of which sailed out of British ports as armed vessels, or had on board cargoes principally consisting of arms or munitions of war. They would have been equally ineffective as against the ships which furnished the armament, equipment, and crews to those vessels, but which were not armed nor employed in hostilities against the United States. Supposing, even, that the scope of these provisions had been so enlarged as to include the cases in question, it would still have been impossible to demand security for, or to order the detention of, vessels to which no suspicion had attached, such as the Shenandoah and Georgia, or to take retrospective action as regards the Florida and Alabama, which had already escaped before Mr. Adams's appeal and the subsequent negotiation took place. It is fruitless to argue whether a nugatory and fictitious amendment of our law would have been accepted by the United States as a satisfactory proof of the willingness of Great Britain to meet their wishes. In all respects which concern the present controversy, the law of the two countries is identical; and as the Government of the United States declare their own law sufficient to meet the obligations imposed upon them by international duty, it is not easy to understand why they should consider that of England inadequate for the same purpose. It is sufficient to say that the actual circumstances do not warrant Mr. Seward in founding the claims now brought forward on any defect of the foreign-enlistment act.

There is another statement made by Mr. Seward which cannot be here passed over. He draws a contrast between the conduct of the British government during the recent American civil war and that of the United States Government in dealing with the Fenian projects of aggression against Canada. It cannot be admitted that this contrast is justified by the facts of either case. The British government were ready, anxious, and determined, throughout the whole course of the civil war, to exert all the power conferred upon the Queen by the law of the land to prevent British subjects from taking part in that contest. But the law could not be put in force against offenders unless on the production of evidence, first, that the law was violated, and, secondly, that its violation was the act of the persons charged with that offense. The secrecy observed by these persons in their unlawful proceedings baffled all the efforts of Her Majesty's government, no less than those of the diplomatic and consular agents of the United States in this country, to detect them.

The action of the Fenians, on the contrary, was open and avowed. It showed itself in public meetings and in the public press, in the
[30] enrollment of troops, the collection of *arms, the solicitation of money, and, finally, in the establishment in the territory of the United States of a so-called provisional government, with its legislative assembly and administrative officers. Throughout these transactions there has been no attempt at disguise, but rather an arrogant display of publicity. The Government of the United States needed therefore no research on the part of its own officials, nor even a denunciation by British authorities, to establish against these Fenian agitators a palpa-

ble case of infringement of the laws of the United States, coupled with a deliberate design to undertake from the territory of the United States, whose Government were in amity with that of Her Majesty, a military operation directed against either Canada or Ireland. Her Majesty's government are far from desiring in any way to depreciate the friendliness of the course which the United States Government adopted when the proceedings of the Fenians assumed the shape of actual aggression on British territory; they readily admit that "the unlawful attempts against Great Britain were disallowed" by that Government, whose direct and unprompted action greatly contributed to the defeat of the enterprise. But they utterly deny the alleged similarity of the two cases. They cannot admit that because four vessels escaped the action of the British law, two of them unperceived, one by an accident, and one for want of evidence, Mr. Seward is justified in stating that "ruinous British warlike expeditions against the United States were practically allowed and tolerated by Her Majesty's government, notwithstanding remonstrance:" and looking to the fact that at least an equal number of vessels were arrested before commencing their career, and that on all occasions when the law could be enforced legal proceedings were taken against the offenders, they consider that they have a right to assert that, under circumstances similar to those in which the United States Government has been lately placed, they would not have pursued a less fair or friendly course.

It is not the intention of Her Majesty's government to pursue this discussion further; yet I must observe that, were it their wish to apply to the conduct of the United States the same kind of criticism in which Mr. Seward has indulged with regard to them, they might fairly be entitled to ask, whether the restoration, by order of the President, of arms captured from Fenian insurgents, without any appearance of an intention on the part of those insurgents to abandon their culpable projects, and the discontinuance of government prosecutions instituted against their leaders, without any proof that the evidence against those leaders was inadequate for their conviction, are not circumstances quite as open to an unfavorable construction as any of those on which Mr. Seward has laid so much stress as against the conduct of this government. But Her Majesty's government have made no complaint of those proceedings, nor do they intend to make any. They think it fairer and more reasonable, when judging of the policy of other states, to deal with that policy as a whole, and not to magnify into undue importance isolated acts which may appear contrary to its general tendency. This rule they will always be ready to apply to others, and they claim its application to themselves.

Having dealt so far with Mr. Seward's argument, and pointed out the wide discrepancies that exist between his views of the question and those entertained by Her Majesty's government, I now proceed to consider the practical proposition with which he concludes.

It is impossible for Her Majesty's present advisers to abandon the ground which has been taken by former governments, so far as to admit the liability of this country for the claims then and now put forward. They do not think that such liability has been established according to international law or usage; and though sincerely and earnestly desiring a good understanding with the United States, they cannot consent to purchase even the advantage of that good understanding by concessions which would at once involve a censure on their predecessors in power, and be an acknowledgment, in their view uncalled for and unfounded, of wrong-doing on the part of the British executive

and legislature. But, on the other hand, they are fully alive to the inconvenience which arises from the existence of unsettled claims of this character between two powerful and friendly governments. They would be glad to settle this question, if they can do so consistently with justice and national self-respect; and with this view they will not be disinclined to adopt the principle of arbitration, provided that a fitting arbitrator can be found, and that an agreement can be come to as to the points to which arbitration shall apply.

Of these two conditions, the former need not be at present discussed; the latter is at once the more important and the more pressing.

With regard to the ground of complaint on which most stress is laid in Mr. Seward's dispatch, viz, the alleged premature recognition of the Confederate States as a belligerent power, it is clear that no reference to arbitration is possible. The act complained of, while it bears very remotely on the claims now in question, is one as to which every state must be held to be the sole judge of its duty; and there is, so far as I am aware, no precedent for any government consenting to submit
[31] to the judgment of a foreign power, *or of an international commission, the question whether its policy has or has not been suitable to the circumstances in which it was placed.

The same objection, however, does not necessarily apply to other questions which may be at issue between the two governments in reference to the late war; and with regard to these, subject to such reservations as it may hereafter be found necessary to make, I have to instruct you to ascertain from Mr. Seward whether the United States Government will be prepared to accept the principle of arbitration, as proposed above. Should this offer be agreed to, it will be for Mr. Seward to state what are the precise points which, in his opinion, may be, and ought to be, so dealt with. Any such proposal must necessarily be the subject of deliberate consideration on the part of Her Majesty's government; but they will be prepared to entertain it in a friendly spirit, and with the sincere desire that its adoption may lead to a renewal of the good understanding formerly existing, and, as they hope, hereafter to exist, between Great Britain and the United States.

I am, &c.,
(Signed) STANLEY.

No. 3.

Lord Stanley to Sir F. Bruce.

FOREIGN OFFICE, *November* 30, 1866.

SIR: In my dispatch of this date I have confined myself exclusively to the consideration of the American claims put forward in Mr. Seward's dispatch to Mr. Adams of the 27th of August, and arising out of the depredations committed on American commerce by certain cruisers of the Confederate States.

But independently of these claims there may, for aught Her Majesty's government know, be other claims on the part of American citizens originating in the events of the late civil war; while there certainly are very numerous British claims, arising out of those events, which it is very desirable should be inquired into and adjusted between the two countries.

The two governments were in communication with each other on this

subject in the latter part of the year 1862, and the draught of a convention for the settlement of such claims was actually under their consideration. Circumstances, however, prevented the matter being proceeded with at that time, and, indeed, it was premature to enter into such a convention while the civil war was still raging, and new claims were continually starting up.

The time seems now favorable for reviving the subject.

The Government of the United States have brought before that of Her Majesty one class of claims of a peculiar character put forward by American citizens, in regard to which you are authorized by my other dispatch of this date to make a proposal to Mr. Seward; but Her Majesty's government have no corresponding class of claims to urge upon the attention of the American Government.

Her Majesty's government think, however, that they may fairly invite the Government of the United States to undertake that in the event of an understanding being come to between the two governments with reference to the manner in which the special American claims, to which my other dispatch alludes, shall be dealt with, they will agree that, under a convention to be separately but simultaneously concluded, the general claims of the subjects and citizens of the two countries, arising out of the events of the late war, shall be submitted to a mixed commission, as in a former instance, for examination, with a view to their eventual payment by the government adjudged to be responsible.

You will make a communication to Mr. Seward to the effect of this dispatch.

I am, &c.,
(Signed) STANLEY.

No. 4.

Sir F. Bruce to Lord Stanley.

[Extract.]

WASHINGTON, *January* 7, 1867. (Received January 23.)

I have the honor to inclose copy of the note I have addressed to Mr. Seward on the proposals for a settlement of claims contained in your lordship's dispatches of the 30th of November last.

Though not instructed to do so, it appeared to me desirable to pursue the same course as was adopted by Mr. Adams in dealing with
[32] the dispatch of Mr. Seward, to which it is *a reply. I have, therefore, confined myself to inclosing a copy of it, with a request that I may be informed if the proposal is accepted.

I have embodied in the same note the substance of your lordship's dispatch on the subject of a mixed commission, in order that it may be taken into consideration at the same time with the proposal for arbitration of the cruiser claims.

I am in hopes that these proposals will be met in a conciliatory spirit, and at all events I feel convinced that no better opportunity than the present is likely to arise for arriving at a solution of these important questions.

[Inclosure in No. 4.]

Sir F. Bruce to Mr. Seward.

WASHINGTON, *January* 7, 1867.

SIR: Her Majesty's government having had under their consideration your dispatch to Mr. Adams, dated the 27th of August, 1866, on the claims of citizens of the United States against Great Britain, on account of the losses inflicted on American commerce by cruisers of the so-called Confederate States during the civil war, have addressed to me a dispatch setting forth their views on the various subjects to which it alludes, and containing certain proposals on their part by which they consider that a settlement of these claims may be effected.

In bringing this proposal under your notice, I cannot do better than follow the method adopted by Mr. Adams, and I have therefore the honor to inclose copy of the dispatch, with a request that you will inform me at your convenience whether the Government of the United States are prepared to accept the principle of arbitration, as contained in that dispatch.

I am instructed at the same time to state that, independently of these claims, there may be other demands on the part of American citizens arising out of events of the late civil war, while there are certainly numerous British claims arising out of those events, which it is very desirable should be inquired into and adjusted.

The two governments were in communication with each other on this subject in the latter part of the year 1862, and the draught of a convention for a settlement of these claims was actually under consideration. Circumstances, however, prevented the matter being proceeded with at that time, and indeed it was premature to enter upon it while fresh claims were liable to start up.

The time seems now favorable for reviving the subject, and Her Majesty's government think that they may fairly invite the Government of the United States to undertake, in the event of an understanding being come to between the two governments as to the manner in which the special American claims alluded to in the inclosed dispatch shall be dealt with, that, under a convention to be separately but simultaneously concluded, the general claims of the subjects and citizens of the two countries arising out of the events of the late war may be submitted to a mixed commission, as in a former instance; the commission to be charged with the examination of such claims, with a view to the eventual payment by the government adjudged to be responsible.

I have, &c.,
(Signed) FREDERICK W. A. BRUCE.

No. 5.

Lord Stanley to Sir F. Bruce.

FOREIGN OFFICE, *January* 24, 1867.

SIR: Her Majesty's government approve the note which you have addressed to Mr. Seward, communicating the proposals which you were instructed to make to the United States Government, with a view to the settlement of the Alabama and other claims, of which a copy was inclosed in your dispatch of the 7th instant.

I am, &c.,
(Signed) STANLEY.

No. 6.

Sir F. Bruce to Lord Stanley.

WASHINGTON, *January* 14, 1867. (Received January 28.)

MY LORD: I have the honor to inclose a copy just received of a note from Mr. Seward, in reply to that which I addressed to him on
[33] the 7th instant, forwarding a copy of your *lordship's dispatch in reply to Mr. Adams's proposal with reference to the settlement of claims arising out of the civil war.

I have, &c.,
(Signed) FREDERICK W. A. BRUCE.

[Inclosure in No. 6.]

Mr. Seward to Sir F. Bruce.

DEPARTMENT OF STATE,
Washington, January 12, 1867.

SIR: I have the honor to acknowledge the receipt of your communication of the 7th instant, which is accompanied by a copy of a dispatch which was addressed to you by Lord Stanley on the 30th of November. In that communication Lord Stanley sets forth the views taken by Her Majesty's government of the so-called Alabama claims presented in my dispatch to Mr. Adams, and concludes with proposing the principle of arbitration, attended with some modification in regard to those claims. You inquire whether the Government of the United States is prepared to accept that principle as contained in that dispatch.

I have the honor to say in reply that, following the course of proceedings which has hitherto prevailed, I have to-day communicated in a dispatch to Mr. Adams the views of this Government concerning the question which you propound, and have instructed him to submit a copy of the same to Lord Stanley. I cheerfully give you, however, a copy of that paper for your information. Her Majesty's government will learn from it that this Government will expect a further communication from them before deciding the question of accepting the principle of arbitration.

You also inquire whether, in the event of an understanding being come to between the two governments as to the manner in which the special American claims alluded to in my dispatch, and in Lord Stanley's answer thereto, this Government would be willing to enter into a convention for a mixed commission upon the general claims of the subjects and citizens of the two countries not involved in that correspondence, such convention to be independent and separate from, but simultaneous with, the completion of an understanding in regard to the disposition of the special claims. On this point I have the honor to reply that, although this latter question must, under present circumstances, be held in reserve, yet it will be cheerfully taken into consideration when we shall have been favored with the further views of Her Majesty's government upon the special matters under discussion, and shall thus be enabled to determine the probabilities of effecting a final arrangement for a settlement of those special claims.

I have, &c.,
(Signed) WILLIAM H. SEWARD.

No. 7.

Mr. Adams to Lord Stanley.

LEGATION OF THE UNITED STATES,
London, January 28, 1867. (Received January 28.)

MY LORD: I have the honor to transmit herewith a copy of a dispatch just received from the Secretary of State of the United States, dated the 12th instant, with instructions to lay it before you, for the consideration of Her Majesty's government.

I pray, &c.,
(Signed) CHARLES FRANCIS ADAMS.

[Inclosure in No. 7.]

Mr. Seward to Mr. Adams.

DEPARTMENT OF STATE,
Washington, January 12, 1867.

SIR: A copy of a dispatch, written by Lord Stanley on the 30th November last, has been submitted to me by Her Majesty's minister plenipotentiary here, Sir Frederick W. A. Bruce. It contains a review of my dispatch, concerning so-called Alabama claims.

You will please lay before Lord Stanley this reply:

The President appreciates the consideration and courtesy manifested by Her Majesty's

government. I shall be content, on this occasion, with defending such of my former statements as Lord Stanley has disallowed. I think it unnecessary to disclaim a purpose of impugning the motives of the late, or of the present ministry. Governments, like individuals, necessarily take their measures with reference to facts and cir-
[34] cumstances *as they at the time appear. The aspect often changes with further development of events. It is with ascertained facts, and not with intentions, that we are concerned; and it is of Great Britain as a state, and not of any minister or ministry, that we complain.

Lord Stanley justly reminds me that the Sumter was of American, not of British origin, and that she began her career by escaping from New Orleans, and not from a British port. I think, however, that the correction does not substantially affect the case. The Sumter, belonging to loyal owners, was employed in trade between New York and New Orleans. Insurgents seized and armed her there, and sent her out through the blockade. She captured several United States merchant-vessels, and sent them into Cienfuegos. On the 30th of July, 1861, she entered the British port at Trinidad, in the West Indies, ostentatiously displaying an insurgent flag, which had not then, nor has it ever since, been recognized as a national ensign, either by the United States or by Great Britain, or by any other state. Being challenged, she presented a pretended commission, signed, not by the President of the United States, but by Jefferson Davis, an insurgent chief. The governor of Trinidad exhibited the British standard as a compliment to the insurgent visitor. The Sumter was entertained there six days, and supplied with coal.[1] After renewed depredations, she took shelter, on the 19th of January, 1862, in the British port of Gibraltar, in continental Europe. Being effectually locked in there for months by United States cruisers, she was, against the protest of this Government, allowed to be sold to British buyers for the account and benefit of the insurgents. She then hoisted the British flag, and under it was received at Liverpool, within the British realm.

It is, indeed, true, as Lord Stanley has observed, that the Alabama, when she left England, was wholly unarmed and not fully equipped as a war-vessel. It is also true that she received an armament, a further equipment, a commander, and a crew in Angra Bay, Azores, a possession of the Crown of Portugal, where the British government had no jurisdiction, and could exercise no lawful control, even if they had an opportunity. But, on the other hand, it is to be remembered that not only was the vessel built at Liverpool, but the armament and the supplemental equipment were built and provided there also, simultaneously and by the same British hands, and also that the commander and crew were gathered and organized at the same time and the same place; the whole vessel, armament, equipment, commander, and crew were adapted, each part to the other; and all were prepared for one complete expedition. The parts were fraudulently separated in Liverpool, to be put together elsewhere, and they were fraudulently conveyed thence to Angra Bay and there put fraudulently together by Her Majesty's subjects, not less in violation of British than of Portuguese obligations to the United States. The offenders were never brought to justice by Her Majesty's government, nor complained of by that government to the Queen of Portugal. The Alabama, from the laying of her timbers in Liverpool until her destruction by the Kearsarge, off Cherbourg, never once entered any port or waters of the United States. Whatever pretended commission she ever had as a ship of war must have been acquired either in Great Britain or some other foreign country at peace with the United States, or on the high seas. Nevertheless, the Alabama was received, protected, entertained, and supplied in her devastating career in the British ports of Cape Town and Singapore in the East, and when she was finally sunk in the British Channel, her commander and crew were, with fraudulent connivance, rescued by British subjects and ostentatiously entertained and caressed as meritorious but unfortunate heroes at Southampton. With these explanations, I leave the affair of the Alabama where it was placed in the representation of Mr. Adams.

Lord Stanley says that the Florida, under the original name of Oreto, left England unarmed and unequipped. It must not be forgotten, however, that while building she was denounced to Her Majesty's government by Mr. Adams. Lord Stanley also says that the Shenandoah left England unobserved, and therefore unquestioned, and, for anything that had transpired, on a legitimate voyage, and that she was only armed, equipped, and manned as a war-vessel off Funchal, within Portuguese dominion. I am sure that it must be unnecessary to refer here to the fact that the building of the Florida, the Georgia, and the Shenandoah in British ports, and the arming and equipment of them outside of British jurisdiction, were fraudulent in the same manner that has been specially described in regard to the Alabama. The Shenandoah was received, protected, and supplied, in defiance of our protest, at Melbourne, in Australia. She proceeded thence to the Arctic seas, where she destroyed twenty-nine United States merchant-vessels, and finally, after the end of the rebel hostilities here, she returned to Liverpool, the place from which she had first gone forth, and there surrendered herself to Her Majesty's government as to an ally or a superior.

[1] Mr. Adams to Lord Russell, October 1, 1861.

Lord Stanley excuses Her Majesty's government, in part upon the ground that
[35] *sufficient evidence or notice was not presented by the United States, in part on the ground of accidental hinderances or embarrassments, while in one place he seems to imply that the only devastating vessels of which we complain are the Sumter, the Alabama, the Florida, and the Shenandoah. In regard to the first excuse, I have to say that British complaints of lack of vigor on our part would, under any circumstances, be unreasonable. International, as well as municipal, laws depend for their execution in Great Britain upon Her Majesty's government, and not upon our own. Again, I think that Lord Stanley will find, by referring to unpublished records in the foreign office, what certainly appears in our confidential archives, that at the time when the fraudulent building, arming, and equipping of those vessels were going on in England, we were required, out of tenderness to British sensibilities and with the approval of Her Majesty's government, to relax rather than increase our vigilance, then called by the repulsive name of espionage.

In relation to the second excuse, I think that the alleged hinderances and embarrassments were nothing else than the skillful machinations of the offending parties themselves. In enumerating certain vessels in my former communication, I wrote of them not as all the vessels complained of, but by way of describing the class of which we complained. There were many others. The Nashville, stolen from loyal owners at Charleston, after having evaded the blockade, and after having captured the Harvey Birch, arrived at Southampton on the 20th of November, 1861. She was entertained there until February 3, 1862, and then left the harbor, protected from the United States cruiser Tuscarora by Her Majesty's war-frigate Shannon. She was afterward hospitably entertained at the British ports at Bermuda and Nassau, in the West Indies. The Alabama improved her own crafty experience. Having in one of her cruises captured the United States merchant-ship Conrad, near the Cape of Good Hope, on the 21st of June, 1863, she commissioned the Conrad as a "confederate" pirate on the high seas, under the name of the Tuscaloosa. In like manner the Florida captured the merchant-ship Clarence upon the ocean, and commissioned her, and gave her an armament, force, and equipment of a twelve-pound howitzer, twenty men, and two officers. Afterward the Florida transferred the same authority, armament, and equipment to the Tacony, on the high seas, which vessel captured, bonded, and destroyed ten United States merchant-vessels off the Atlantic coast.

Having recalled these facts, I must now beg leave to re-affirm as substantially correct my former statement, the statement to which Lord Stanley has excepted, namely: the Sumter, the Alabama, the Florida, the Shenandoah, and other ships of war, were built, armed, equipped, and fitted out in British ports, and dispatched therefrom by or through the agency of British subjects, and were harbored, sheltered, provided, and furnished, as occasion required, during their devastating career, in ports of the realm, or in ports of the British colonies in nearly all parts of the globe.

Lord Stanley excuses the reception of the vessels complained of in British ports, subsequently to their fraudulent escapes and armament, on the ground that when the vessels appeared in those ports they did so in the character of properly commissioned cruisers of the government of the so-styled Confederate States, and that they received no more shelter, provisions, or facilities than was due to them in that character. This position is taken by his lordship in full view of the facts that, with the exception of the Sumter and the Florida, none of the vessels named were ever found in any place where a lawful belligerent commission could either be conferred or received. It would appear, therefore, that, in the opinion of Her Majesty's government, a British vessel, in order to acquire a belligerent character against the United States, had only to leave the British port where she was built clandestinely, and to be fraudulently armed, equipped, and manned, anywhere in Great Britain or in any foreign country, or on the high seas, and in some foreign country or upon the high seas to set up and assume the title and privileges of a belligerent, without even entering the so-called confederacy, or ever coming within any port of the United States. I must confess that if a lawful belligerent character can be acquired in such a manner, then I am unable to determine by what different course of proceeding a vessel can become a pirate and an enemy to the peace of nations.

Lord Stanley defends the Queen's proclamation of neutrality by quoting against me certain utterances of the Supreme Court of the United States, and of the District of Columbia, of which he says Her Majesty's government has seen no refutation. Certainly it is not my purpose to refute these utterances. They were made by learned and loyal tribunals. Moreover, Lord Stanley understands them correctly as showing that, at the time they were pronounced, it was the opinion of those courts that a civil war was actually existing in the United States, and that it was existing at the time when the causes of action arose in the cases which the courts were adjudicating. I may admit, further, that the courts referred to the President's blockade procla-
[36] mation, which preceded the Queen's *neutrality proclamation, as one among the facts which proved that the controversy here was not a mere local insurrection, but had all the gravity, character, and consequences of a civil war.

But I must insist, on the other hand, first, that neither of the judicial utterances referred to asserts or admits that the President's blockade proclamation expressly and in form declared or recognized the existence of civil war, and, in the second place, that both of these judicial utterances unmistakably imply the contrary. The District court of Columbia pronounced its opinion on the 17th of June, 1861. The Supreme Court of the United States withheld its opinion until the 10th March, 1863. The capture which constituted the cause of action in the District court occurred on the 21st of May, 1861; the captures concerning which the Supreme Court of the United States adjudicated occurred on the 17th of May, 1861, the 20th of May, 1861, the 23d of June, 1861, and the 10th of July, 1861. The Queen's proclamation of neutrality had appeared before either court pronounced its opinion, and before either cause of action arose. British subjects were claimants in some, and other foreigners were claimants in others of these litigations. Among the facts of which the Supreme Court took notice, and which they set forth as the grounds of their opinion, is the following: "As soon as the news of the attack on Fort Sumter, and the organization of a government of the seceding States assuming to act as belligerents, could become known in Europe, to wit, on the 13th of May, 1861, the Queen of England issued her proclamation of neutrality, recognizing hostilities as existing between the Government of the United States of America and certain States styling themselves the Confederate States of America. This was immediately followed by similar declarations or silent acquiescences by other nations."

This statement served to prepare the way for the proposition which became a chief basis in the decision of the Supreme Court, to wit: "After such an effectual recognition by the sovereign, the citizen of a foreign state is estopped to deny the existence of a war and its consequences as regards neutrals." It is thus seen that the decision of the Supreme Court, which Lord Stanley quotes in defense of the Queen's proclamation of neutrality, was based upon the proclamation itself, and thus the proclamation defended, and the defending opinion of the Supreme Court, reciprocate each other. The District court of Columbia is only an inferior local tribunal, whose unreviewed reasoning would not anywhere be deemed authoritative upon international questions. I might, therefore, bring my remarks upon the Queen's proclamation of neutrality to an end, but I desire to leave nothing unsaid that might tend to elucidate the subject. The issue between the United States and Great Britain, which is the subject of the present correspondence, is not upon the question whether a civil war has recently existed in the United States, nor is the issue upon that other question, namely, whether such a civil war was actually existing here at the date of the Queen's proclamation of neutrality. Certainly there is a stage when a civil commotion, although attended by armed force, is nevertheless in fact only a local insurrection, as it is also true that local insurrections often transcend municipal bounds and become civil wars. It is always important, and generally difficult and perplexing, to recognize and definitely determine the transition stage with absolute precision. The disturbed nation suffers a serious loss of advantages if recognition is prematurely made. The insurrectionary party may suffer a serious loss if it be too long and unjustly withheld. Strangers who may be dealing with one or the other may be injuriously affected in either case. Now what is alleged on the part of the United States is that the Queen's proclamation, which, by conceding belligerent privileges to the insurgents, lifted them up, for the purpose of insurrection, to an equality with the nation which they were attempting to overthrow, was premature because it was unnecessary, and that it was in its operation unfriendly because it was premature.

The discussion necessarily involves a history of that proclamation. On the 28th of February, 1861, the United States, in the customary manner of international conference, announced to Great Britain, as well as to other friendly nations, that certain United States citizens dwelling in South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas had, in pretended State conventions, and in a so-called but unlawful congress, on paper, pronounced a secession or separation from the Federal Government, and asserted themselves by the style of the Confederate States of America. The United States, for special reasons, warned Her Majesty's government that seditious emissaries would endeavor to procure from Great Britain a recognition of the pretended confederacy.[1] The United States protested against such a proceeding. Her Majesty's principal secretary for foreign affairs, on the 22d of March, 1861, listened to the announcement thus made as one which he expected, and said that Her Majesty's government had reached no definite conclusion as
[37] to a proper course of action. He observed that he had seen a *private letter, from which he inferred that accredited ministers or commissioners, authorized to negotiate for recognition, would be shortly sent to Europe by the so-called secessionists. This answer plainly indicates a preparation for the very decision against which the United States protested. On the 9th of March thereafter, the President of the United States caused the before-mentioned monition and protest to be renewed, with the assurance to Her Majesty's government that he then

[1] Black's dispatch, February 28, 1861; Mr. Dallas to Mr. Seward, March 22, 1861.

entertained a full confidence in a speedy restoration of the harmony and unity of the Government, through judicious measures co-operating with a deliberate and loyal action of the American people. The President earnestly desired Her Majesty's government not to intervene in any unfriendly way in the domestic concerns of this country. He distinctly stated further that he would take care in every case to render any possible injuries which foreigners might suffer as light as possible, and fully to indemnify them. In answer to this latter communication, Her Majesty's government, on the 8th of April, 1861, said that the matter seemed not yet ripe for decision, one way or the other, and this was all that at that moment they could say. They added, however, a statement that English opinion seemed to be tending toward the theory that a peaceful separation of the American Union might work beneficially for both groups of States, and might not injuriously affect the rest of the world. It was then made known that the subject was to be debated on that very day in the House of Commons, and that six days thereafter a motion for absolute recognition of the pretended confederacy, otherwise called there a new nation, would be pressed in Parliament.[1] When these facts became known to this government, care was taken to reply that the answer of the foreign secretary of state was by no means satisfactory, and Her Majesty's government was therefore advised that they were at liberty to choose whether they would retain the friendship of the United States by refusing all aid and comfort to their domestic enemies, or whether Her Majesty's government would take the precarious benefits of a different course.[2] It was not long left in doubt in European circles which alternative Great Britain would elect. Her Majesty's principal secretary for foreign affairs having invited a conference on the 2d of May, announced to the United States minister in London, Mr. Dallas, that three representatives of the so-called southern confederacy were then in that capital, and that he, Lord Russell, was willing to see them unofficially. He then made the important announcement that there already existed an understanding between Her Majesty's government and that of France, which would lead both to take the same course as to recognition, whatever that course might be. The United States minister, of course unprepared with instructions to meet these revelations, certainly unlooked for here, replied that his appointed successor, Mr. Adams, was then on his voyage, and might be expected within ten or fifteen days. The secretary acquiesced in the expediency of waiting for the coming of the new minister. The proposed movement in Parliament for recognition was, at the instance of the secretary of foreign affairs, postponed.

When the President received an account of the last-mentioned interview, he then was unable, as the United States are yet unable, to perceive how it was thought by Her Majesty's government entirely considerate in regard to the United States to consult and agree with France upon a question vital to the United States, without affording them a hearing. Moreover, the United States were then unable, as they are yet unable, to perceive how it is justly considered by Her Majesty's government any more lawful, just, or friendly to entertain traitors against the United States, with a view to business negotiations with them, unofficially and privately, than it is to entertain and negotiate with them officially and publicly. Be this as it may, Earl Russell's explanation revealed to the United States the fact, that even thus early, before any effective military advantage had been gained by the insurgents, and even before any meditated blow had been given by this government in its own defense, the British government, Parliament, and people were entertaining privately, and not unkindly, debates with the insurgents and with a foreign power, which involved nothing less than a direct and speedy sanction of the rebellion in the United States, and a dissolution of the American Union. They were yet unwilling to believe that Great Britain would take such a course with unconcealed precipitancy. Mr. Adams, the new minister, in the mean time had been charged with the duty of counteracting the appeals of the disunionists, and was prepared to answer every argument which they could advance, either on the score of British interest, or under the pretext of zeal for the freedom of trade, or for the freedom of men.[3] The insurgent emissaries reached London on the 30th of April. The President's blockade proclamation, which was issued on the 13th of April, reached London on the 3d of May. On the 4th of May, only two days after the conference of Mr. Dallas with Lord Russell, he
[37] favored the insurgent emissaries with an *unofficial interview. He patiently, it is not for us to say confidingly, heard them disclaim slavery as a principal cause of the incipient rebellion, while they alleged that its real cause was the high prices which the so-called South was obliged to pay for manufactured goods, by way of protecting so-called northern manufacturers. They favored him with glowing statements of the South, and its exports valued by millions. He answered that, when the question of recognition should come to be formally discussed, inquiry must be made on two points—first, whether the body seeking recognition could maintain its position

[1] Mr. Dallas to Mr. Seward, April 9, 1861.
[2] Mr. Seward to Mr. Adams, April 27, 1861.
[3] Mr. Seward to Mr. Adams, April 10, 1861.

as an independent state; and, secondly, in what manner it was proposed to maintain relations with foreign states. After reviewing this conversation, is it to be wondered at that the traitors, when retiring from this interview, assured his lordship that they would rest in London in the hope that a recognition (of the sovereignty) of the southern confederacy would not long be delayed. Two days later, namely, on the 6th of May, the principal secretary for foreign affairs announced in Parliament that the ministry had consulted the law-officers of the Crown—the attorney-general and the solicitor-general, and the Queen's advocate—and Her Majesty's government had come to the opinion that the southern confederacy of America, according to the principles which seemed to them to be just principles, must be treated as a belligerent.[1] The Queen's proclamation, which went half the way toward recognition of the so-called southern confederacy, was issued at London on the 15th of May, in the morning. Mr. Adams arrived there in the evening. He was officially received on the 16th. This is the history of the Queen's proclamation of neutrality.[2] What I wrote concerning it in the dispatch which Lord Stanley has reviewed is as follows.[3]

"While as yet the civil war was undeveloped and the insurgents were without any organized military forces or treasury—long before they pretended to have a flag or to put an armed ship or even a merchant-vessel upon the sea—Her Majesty's government, acting precipitately, as we have always insisted, proclaimed the insurgents a belligerent power, and conceded to them the advantages and privileges of that character, and thus raised them, in regard to the prosecution of an unlawful armed insurrection, to an equality with the United States. The United States remain of the opinion that the proclamation has not been justified on any ground of either necessity or moral right; that, therefore, it was an act of wrongful intervention, a departure from the obligations of existing treaties, and without sanction of the law of nations."

Lord Stanley's principal point, in defending the queen's proclamation, is, that it did no more than acknowledge a state of war which had already been recognized by the President himself in his proclamation of a blockade, which was issued on the 19th of April, 1861, and his further proclamation which was issued on the 27th of April, 1861. We have already seen that the Supreme Court of the United States and that of the District of Columbia, in their opinions, did not pretend, admit, or imply that the President's aforementioned proclamation expressly and in form declared or recognized a state of civil war. So Lord Stanley, with commendable candor, refrains from making any similar claim in regard to the President's blockade proclamations. The courts reached their conclusion that a state of civil war was existing at the time of the maritime captures, which were under consideration by processes of reasoning and argument. Lord Stanley is content with adopting the court's argument in identical words. He quotes from the Supreme Court: "The President was bound to meet it in the shape it presented itself, without waiting for Congress to baptize it with a name, and no name given to it by him or them could change the fact."

Lord Stanley quotes also the words, that "the proclamation of blockade is conclusive evidence to the court that a state of war existed;" and, in the same sense, he quotes from the court of the District of Columbia: "That the facts of the secession of the Southern States, as set forth by the President, with the assertion of the right of blockade, amount to a declaration that civil war exists."

The courts correctly understood the facts with which they had to deal. In the causes which were before those courts, the claimants insisted that a state of civil war was not existing at the time of the respective captures. They so insisted on the ground that no competent authority had declared a civil war or had acknowledged the insurrection as a civil war giving rise to belligerent rights; that Congress had not so defined, described, or acknowledged it, and that the President had not by his proclamation so named, baptized, or recognized it.

The recitals from the courts sustain the historical view of the case which I have
[39] *presented. Before the Queen's proclamation of neutrality the disturbance in the United States was merely a local insurrection. It wanted the name of war to enable it to be a civil war and to live, endowed as such with maritime and other belligerent rights. Without that authorized name it might die, and was expected not to live and be a flagrant civil war, but to perish a mere insurrection.

It was, therefore, not without lawful and wise design that the President declined to confer upon the insurrection the pregnant baptismal name of civil war, to the prejudice of the nation whose destiny was in his hands. What the President thus wisely and humanely declined to do, the Queen of Great Britain too promptly performed. She baptized the slave insurrection within the United States a civil war, and thus, so far as the British nation and its influence could go, gave it a name to live, and flourish, and triumph over the American Union. By this proceeding the Queen of Great Britain

[1] London Times, May 27, 1861; Lord Russell to Lord Lyons, May 11, 1861; British Blue Book, North America, No. 1, 1862, page 26.

[2] Mr. Adams to Mr. Seward, May 17, 1861.

[3] London Times, May 16, 1861.

intervened in the purely domestic and internal affairs of the United States, and derogated from the authority of their government. Reference to the events of the time will show that she misunderstood entirely the actual situation. The President's first proclamation against the insurrection was issued on the 15th of April. He described the condition of affairs as one in which the laws of the United States were opposed, and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings. He called out the militia for a short term of service, to suppress those combinations, and to cause the laws of the land to be duly executed. He expressly declared that the first service assigned to the militia forces would probably be to repossess the forts, places, and property which had been seized from the Union; and that in every event the utmost care would be observed, consistently with the objects aforesaid, to avoid any devastation, any destruction of, or interference with property, or any disturbance of peaceful citizens of any part of the country; and he commanded the forces composing the combinations before mentioned to disperse, and to return to their respective abodes within twenty days. He at the same time convoked Congress for the 4th day of July, to consider the state of the Union. So also in the President's second or supplemental proclamation of the blockade he defined its necessity as arising from an insurrection which had broken out in the States therein named, by means whereof the uniform laws of the United States for the collection of revenue could not be effectually executed. He recited further, that a combination of persons engaged in such insurrection had threatened to grant pretended letters of marque. He declared further, that he had required the persons engaged in these disorderly proceedings to desist therefrom, and had called out the militia to restore order and the supremacy of the laws. All these declarations, recitals, warnings, and commands are the especial features of governmental proclamations, designed to suppress local insurrections without suffering them to attain the orm and dimensions of civil war. It was the absolute right of this Government to treat the insurrection in this manner; and in our opinion it was not a right of Great Britain, by any recognition of the insurgents, either as sovereign or as belligerent, to defeat the wise and humane measures of the President in that respect. It will be found, we think, that all nations which have desired to practice justice and friendship toward a state temporarily disturbed by insurrection, have foreborne from conceding belligerent privileges to the insurgents, in anticipation of their concession by the disturbed state itself. A nation which departs from this duty always practically commits itself as an ally to the insurgents, and may justly be held to the responsibilities of that relation.

I pass, without comment, Lord Russell's justification of the Queen's proclamation, by assimilating the situation here in 1861 to that of the Greeks rising against their Turkish oppressors in 1825. It could hardly be expected that this Government would be convinced by an argument that assimilates them to the Ottoman power in its decline, and the slave-holding insurgents to the Christian descendants of heroic Greece, in their re-ascent to civilization. Lord Stanley thinks that the Queen's proclamation could have no tendency to encourage and create into a civil war a political convulsion which otherwise would have remained a mere local insurrection. If it were true that an insurrection acquires no new powers, faculties, and attributes, when it receives from its own or a foreign government the baptismal name of civil war, the point which Lord Stanley raises might require grave consideration. Such, however, is not generally the case; and certainly it was not the case in the late contest here. Provisions and treasures, arms, ordnance, and munitions of war, and even ships of war, began to pour forth from the British shores in support of the insurgent cause, so soon as the Queen's recognition of it as a belligerent was proclaimed; and they continually increased, until it was finally suppressed by the vigor and energy of this Government. The commercial losses of the United States, which are the immediate subject of the present correspondence, are only a small part of the damage which this country has sustained at the hands of the British abettors of the insurgents. But will Lord Stanley
[43] please to refer to the table in which these special losses are presented, *showing ninety-five merchant-vessels, with ten millions of property, destroyed by the cruisers, which practically were sent forth from the British shores, and say whether he believes it possible that such destructive proceedings could have occurred if Great Britain had not conceded belligerent rights to the insurgents? Nor is it to be overlooked that foreign moral sanction and sympathy are of more value to a local insurrection than even fleets and armies.

Lord Stanley presents the considerations which induced the issue of the Queen's proclamation. He says that Her Majesty's government had to provide at a distance for the loss and interests of British subjects in or near the seat of war. But who required British subjects to be there? Who obliged them to remain in a place of danger? If they persisted in remaining there, had they not all the protection that citizens of the United States enjoyed? Were they entitled to more? Moreover, does the jurisdiction of Great Britain extend into our country to protect its citizens sojourning here from accidents and casualties to which our own citizens are equally exposed?

Lord Stanley continues, Her Majesty's government had to consider the rapidity with which events were succeeding one another on the American continent, and the delay which must have elapsed before intelligence of those events could reach them, and the pressing necessity for definite instructions to the authorities in their colonies and on their naval stations near the scene of the conflict. On the contrary, it seems to us that prudence and friendship, had they been deliberately consulted, would have suggested to Her Majesty's government to wait for the development of events and definitive action of the United States.

Lord Stanley repeats from Earl Russell, and re-affirms, that "Her Majesty's government had but two courses open to them on receiving intelligence of the President's proclamation, namely, either that of acknowledging the blockade and proclaiming the neutrality of Her Majesty, or that of refusing to acknowledge the blockade and insisting upon the right of Her Majesty's subjects to trade with the ports of the South where the Government of the United States could exercise no fiscal control at that time."

With due respect I must demur to this statement. The disturbance being, at the time referred to, officially and legally held by the Government of the United States to be a local insurrection, this Government had a right to close the ports in the States within the scene of the insurrection, by municipal law, and to forbid strangers from all intercourse therewith, and to use the armed and naval forces for that purpose. A blockade was legitimately declared to that end; and, until the state of civil war should actually have developed, the existence of a blockade would have conferred no belligerent rights upon the insurgents. In choosing the blockade as a form of remedy less oppressive than the closing of the ports by statute, the United States might perhaps have come under an obligation to respect any just rights and interests of aliens which might have been infringed. There was, however, no just ground of apprehension on that subject, for the history of the time shows that those rights were in all cases inviolately respected.

Again, the blockade could have been suitably acknowledged by Her Majesty's government without a proclamation conceding belligerent rights to the insurgents. Certainly forbearance from foreign strife can be practiced, like every other national virtue, without public proclamation. There is hardly a nation in any part of the world which has not been disturbed by both internal and external wars since the United States became an independent maritime power. I find, however, in our records, that the United States have accorded a recognition of belligerent rights only in one case, namely, in the case of the flagrant war between France and the allied European powers in 1793. In all other cases we have either disallowed belligerent rights or preserved silence.

Lord Stanley says that, "If Mr. Seward means to base the present claims on the ground that the British government should, while acknowledging the blockade, have awaited the arrival of a confederate ship of war in British ports before admitting the possession by the Confederate States of a ship of war, and, therefore, their right to be treated on the high seas as a belligerent power, a reference to dates will show that the question would have been raised on the arrival of the Sumter at Trinidad, and of the Nashville at Southampton, some months before Mr. Adams laid his complaints against the vessels mentioned in the Summary of Claims."

To this argument it is deemed a sufficient reply that neither of the two vessels named in fact appeared in a British port or upon the high seas until after the Queen's proclamation, which tendered hospitalities and assistance to them, was issued.

I do not deem it necessary to reply at large to the reflections which Lord Stanley makes upon the conduct of this Government in regard to the proceedings of the so-called Fenians. The Fenian movement neither begins nor ends in the United States; the movers in those proceedings are not native citizens of the United States; but they are natives of Great Britain, though some of them have assumed naturalization
[41] in the United States. *Their quarrel with Great Britain is not an American, but a British one, as old—I sincerely hope it may not be as lasting—as the union of the United Kingdom. Their aim is not American, but British revolution. In seeking to make the territory of the United States a base for the organization of a republic in Ireland, and of military and naval operations for its establishment there, they allege that they have followed as an example proceedings of British subjects in regard to our civil war, allowed by Her Majesty's government. The policy and proceedings of the two governments in regard to those parallel movements have not assimilated. The United States Government has not recognized the Irish republic as a belligerent, and has disarmed its forces when found within our territories and waters.

With regard to the manner in which this protracted controversy shall be brought to an end, we agree entirely with the sentiments expressed by Lord Stanley. We should even think it better that it be brought to an end which might, perhaps, in some degree disappoint the parties, than that it should continue to alienate the two nations, each of which is powerful enough to injure the other deeply, while their maintenance of conflicting principles in regard to intervention would be a calamity to all nations. The United States think it not only easier but more desirable that Great Britain should acknowledge and satisfy the claims for indemnity which we have submitted, than it

would be to find an equal and wise arbitrator who would consent to adjudicate them. If, however, Her Majesty's government, for reasons satisfactory to them, should prefer the remedy of arbitration, the United States would not object. The United States, in that case, would expect to refer the whole controversy just as it is found in the correspondence which has taken place between the two governments, with such further evidence and arguments as either party may desire, without imposing restrictions, conditions, or limitations upon the umpire, and without waiving any principle or argument on either side. They cannot consent to waive any question upon the consideration that it involves a point of national honor; and, on the other hand, they will not require that any question of national pride or honor shall be expressly ruled and determined as such. If Her Majesty's government shall concur in these views, the President will be ready to treat concerning the choice of an umpire.

I am, &c.,
(Signed) WILLIAM H. SEWARD.

No. 8.

Lord Stanley to Mr. Adams.

FOREIGN OFFICE, *January* 30, 1867.

SIR: I have the honor to acknowledge the receipt of your note of the 28th instant, forwarding a copy of a dispatch from Mr. Seward replying to the proposals contained in my dispatch to Sir Frederick Bruce of the 30th of November last, with regard to the settlement of claims arising out of the civil war in the United States; and I have the honor to state that Mr. Seward's dispatch will receive the full consideration of Her Majesty's government.

I am, &c.,
(Signed) STANLEY.

No. 9.

Lord Stanley to Sir F. Bruce.

FOREIGN OFFICE, *March* 9, 1867.

SIR: I transmit to you herewith a copy of Mr. Seward's reply,[1] which was communicated to me by Mr. Adams on the 28th of January, to my dispatch of the 30th of November, on the subject of the Alabama claims.

In this reply, as you will perceive, Mr. Seward restates and enforces the allegations made on the part of the United States in the previous correspondence on the subject of these claims, and again discusses the character of the vessels in whose depredations on the commerce of the United States the claims originate, the responsibility of the British government for the equipment and proceedings of those vessels, and above all the liabilities incurred by the British government by reason of its recognition of the belligerent character of the so-called Confederate States.

It appears to Her Majesty's government that no useful result can be obtained by following Mr. Seward over these grounds. They have [42] been fully discussed in the course of a *long-protracted correspondence; no new light can be thrown on the subject-matter of dispute by reviving an exhausted controversy, or by reiterating statements and arguments elaborately maintained or disputed on either side.

[1] Inclosure in No. 7.

Such a course would be calculated rather to defeat than to promote the object which the British government, and, doubtless, that of the United States, has most at heart, namely, the amicable adjustment of the existing points of difference.

I will abstain, therefore, from any detailed examination of the statements in Mr. Seward's dispatch of the 12th January, and will only, for the sake of historical accuracy, specifically allude to two points, in regard to the first of which it is to be observed that, whatever may be found in the confidential archives of the United States, the unpublished records of the British office, as Mr. Seward designates them, do not, so far as I am able to discover, bear out the allegation that any influence was exerted by the British government to induce the authorities of the United States in any quarter of the world to relax their vigilance in detecting and bringing home to suspected parties attempts or intentions to infringe the municipal laws of England, or to evade her international obligations; and on the second point I must repeat, in accordance with my former argument on the subject, that the President of the United States, and not the Queen of England, is primarily responsible for the acknowledgment of the belligerent character in the so-called Confederate States, and that in recognizing the *status* of the so-called Confederate States as belligerent, the British government found itself associated with the greater part if not the whole of the maritime powers of Europe.

But I will not be led any further into a renewal of controversy on these or other points raised by Mr. Seward; and that not because I feel any doubt as to the possibility of maintaining the ground on which the British government have hitherto taken their stand, but because I feel that by doing so I should be more likely to retard than to advance a settlement of the real questions at issue, namely, that of the liability of the British government to make good the losses occasioned to American commerce by the operations of confederate ships of war, in which British subjects are alleged at some time or other to have had more or less interest, and which, in their character of confederate ships of war, were at different times admitted into the ports of Her Majesty's dominions.

In my dispatch of the 30th of November, I explained to you the grounds on which Her Majesty's government could not consent to refer to a foreign power to determine whether the policy of recognizing the Confederate States as a belligerent power was or was not suitable to the circumstances of the time when that recognition was made, but I at the same time expressed the willingness of Her Majesty's government to entertain in a friendly spirit any proposal which might be made to them by the Government of the United States, to refer to arbitration other questions which might be at issue between the two governments in reference to the late war, and I desired you to invite Mr. Seward to state what were the precise points which in his opinion might be and ought to be so dealt with.

Mr. Seward, in his dispatch of the 12th of January, while suggesting that it would be "not only easier but more desirable that Great Britain should acknowledge and satisfy the claims for indemnity which we have submitted, than it would be to find an equal and wise arbitrator who would consent to adjudicate them," goes on to say that if Her Majesty's government should prefer the remedy of arbitration, the United States would not object, but in that case "would expect to refer the whole controversy just as it is found in the correspondence which has taken place between the two governments, with such further evidence and

arguments as either party may desire, without imposing restrictions, conditions, or limitations upon the umpire, and without waiving any principle or argument on either side."

To such an extensive and unlimited reference Her Majesty's government cannot consent; for this reason, among others, that it would admit of, and indeed compel, the submission to the arbiter of the very question which I have already said they cannot agree to submit.

The real matter at issue between the two governments, when kept apart from collateral considerations, is, whether in the matters connected with the vessels out of whose depredations the claims of American citizens have arisen the course pursued by the British government and by those who acted under its authority was such as would involve a moral responsibility on the part of the British government to make good, either in whole or in part, the losses of American citizens.

This is a plain and simple question, easily to be considered by an arbiter, and admitting of solution without raising other and wider issues; and on this question Her Majesty's government are fully prepared to go to arbitration, with the further provision that, if the decision of the arbiter is unfavorable to the British view, the examination
[43] of *the several claims of citizens of the United States shall be referred to a mixed commission, with a view to the settlement of the sums to be paid on them.

But as they consider it of great importance for the maintenance of good understanding between the two countries that the adjudication of this question in favor of one or other of the parties should not leave other questions of claims in which their respective subjects or citzens may be interested to be matter of further disagreement between the two countries, Her Majesty's government, with a view to the common interest of both, think it necessary, as you have already apprised Mr. Seward in your letter of the 7th of January, "in the event of an understanding being come to between the two governments, as to the manner in which the special American claims" (which have formed the subject of the correspondence of which my present dispatch is the sequel) "should be dealt with, that, under a convention to be separately but simultaneously concluded, the general claims of the subjects and citizens of the two countries arising out of the events of the late war should be submitted to a mixed commission, with a view to their eventual payment by the government that may be judged responsible for them."

Such, then, is the proposal which Her Majesty's government desire to submit to the Government of the United States—limited reference to arbitration in regard to the so-called Alabama claims, and adjudication by means of a mixed commission of general claims.

You will read this dispatch to Mr. Seward, and furnish him with a copy of it, as the deliberate reply of Her Majesty's government to his dispatch of the 12th of January, and, in doing so, you will express to him the earnest hope of Her Majesty's government that their present proposal will be accepted by the cabinet of Washington in the spirit in which it is made.

I am, &c.,

(Signed) STANLEY.

No. 10.

Lord Stanley to Sir F. Wright Bruce.

FOREIGN OFFICE, *May* 2, 1867.

SIR: Mr. Adams has this day communicated to me the substance of a dispatch which he had received from Mr. Seward in reply to the proposal which you were instructed by my dispatch of the 9th of March to make on the subject of the claims arising out of the civil war in the United States.

In this dispatch Mr. Seward states that the Government of the United States adheres to the view which they formerly expressed as to the best way of dealing with these claims. They cannot, consequently, consent to a special and peculiar limitation of arbitrament in regard to the Alabama claims such as Her Majesty's government suggest.

They cannot give any preference to the Alabama claims over others in regard to the form of arbitrament suggested; and while they agree that all mutual claims which arose during the civil war between citizens and subjects of the two countries ought to be amicably and speedily adjusted, they must insist that they be adjusted by one and the same form of tribunal, with like and the same forms, and on principles common to all.

The President of the United States, therefore, respectfully declines the proposal of Her Majesty's government; but reciprocating the feelings of good will which have been expressed on the part of Great Britain, the United States Government will cheerfully receive any further suggestions that Her Majesty's government may have to offer.

I am, &c.,
(Signed) STANLEY.

No. 11.

Lord Stanley to Sir F. Wright Bruce.

FOREIGN OFFICE, *May* 24, 1867.

SIR: I abstained in my dispatch of the 2d instant from making any observations on the communication from Mr. Adams to which that dispatch referred, in the expectation that I might receive from you some further explanation, as given to you by Mr. Seward, of the views of the American Government on the subject.

Not having heard from you, I must conclude that Mr. Seward
[44] has not made you *acquainted with the nature of his reply sent through Mr. Adams to your communication to him of my dispatch of the 9th of March.

I have nothing, therefore, beyond the brief statement made to me by Mr. Adams to guide me in dealing with Mr. Seward's reply.

In that reply Mr. Seward says clearly enough that the Government of the United States cannot consent to a special and peculiar limitation of arbitration in regard to the Alabama claims, such as Her Majesty's government suggest; but from his next observation it might be inferred that the offer as regards arbitration made by Her Majesty's government in my dispatch of the 9th of March was understood to have applied only to the claims arising out of the proceedings of the Alabama, to the exclusion of those arising out of the like proceedings of the Florida, Shenandoah, and Georgia.

It is important to clear up this point, and you will therefore state to Mr. Seward that the offer to go to arbitration was not restricted to the claims arising out of the proceedings of the Alabama, but applied equally to those arising out of the like proceedings of the other vessels that I have named; in the words of my dispatch of the 9th of March, the matter at issue between the two governments on which Great Britain was ready to go to arbitration was, "whether, in the matters connected with the vessels out of whose depredations the claims of American citizens have arisen, the course pursued by the British government, and by those who acted upon its authority, was such as would involve a moral responsibility on the part of the British government to make good, either in whole or in part, the losses of American citizens."

It is most desirable that there should be no misunderstanding on this point; but inasmuch as Mr. Seward says that the Government of the United States cannot give any preference to the Alabama claims over others in regard to the form of arbitrament suggested, you may inform Mr. Seward that there was no intention on the part of Her Majesty's government to give any such preference to the Alabama claims over claims in the like category.

That some such misapprehension exists on the part of Mr. Seward may indeed be further deduced from his statement that while the Government of the United States agree that all mutual claims, which arose during the civil war, between citizens and subjects of the two countries, ought to be amicably and speedily adjusted, they must insist that they be adjusted by one and the same tribunal, with like and the same forms, and on principles common to all.

Now the question of disposing of general claims, in contradistinction to the specific claims arising out of the proceedings of the Alabama and vessels of that class, has not hitherto been matter of controversy between the two governments, but has been mooted in its present shape by Her Majesty's government alone; and there is no such similarity between the two classes of claims as would admit of their being dealt with by the same process.

It may be, however, and Her Majesty's government would gladly learn that it was the case, that the Government of the United States agree to waive the question of the alleged premature recognition of belligerent rights, and are satisfied to go to arbitration on the first or Alabama class of claims; provided that all claims whatever, on either side, arising out of the events of the war are equally submitted to arbitration, so "that they may be adjusted by one and the same form of tribunal, with like and the same forms, and on principles common to all."

This, however, from the nature of things, is impracticable; the one class, or the specific claims, such as those arising out of the proceedings of the Alabama and such vessels, depend for their settlement on the solution of what may be called an abstract question, namely, "whether, in the matters connected with the vessels out of whose depredations the claims of American citizens have arisen, the course pursued by the British government, and those who acted under its authority, was such as would involve a moral responsibility on the part of the British government to make good, either in whole or in part, the losses of American citizens;" the other, or general class of claims, admit of no such narrow restriction. The number of claims in this class on either side may be great, the circumstances of each more or less different, and the points involved in them complicated in their nature and bearing; and on these grounds alone it is obvious that they cannot, like those of the Alabama class, be comprised within a single proposition applicable in principle

to all, and bringing all within the compass of a single decision of an arbiter.

The reply which Mr. Seward will return to your communication of this dispatch will, it may be hoped, clear up the obscurity which rests upon the answer received through Mr. Adams to my dispatch of the 9th of March. Her Majesty's government, you will say, abide by their proposals, as set forth in that dispatch. Within the limits set forth in
[45] *that dispatch, they are prepared to go to arbitration in regard to the Alabama and such like claims, on the condition that simultaneously with the reference of those claims to arbitration, an agreement is entered into between the two governments for the adjudication of general claims by a mixed commission.

I am, &c.,
(Signed) STANLEY.

P. S.—You will read this dispatch to Mr. Seward and furnish him with a copy of it.

NORTH AMERICA. No. 2. (1867.)

FURTHER CORRESPONDENCE

RESPECTING

BRITISH AND AMERICAN CLAIMS

ARISING OUT OF THE

LATE CIVIL WAR IN THE UNITED STATES.

LIST OF PAPERS.

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[1] *FURTHER CORRESPONDENCE RESPECTING BRITISH AND AMERICAN CLAIMS ARISING OUT OF THE LATE CIVIL WAR IN THE UNITED STATES.

No. 1.

Lord Stanley to Sir F. Wright Bruce.

FOREIGN OFFICE, *September* 10, 1867.

SIR: The minister of the United States called upon me to-day, and communicated to me a dispatch, of which, however, he was not authorized to give me a copy, from Mr. Seward, dated the 12th of August, in reply to my dispatch to you of the 24th of May, respecting the mutual claims of the two countries on each other arising out of the late civil war.

By this despatch Mr. Adams is authorized to assure me that Mr. Seward did not understand my previous offer of arbitration to apply only to claims arising out of the depredations of the Alabama, to the exclusion of those arising out of the depredations of vessels of the like character, but, on the contrary, understood the offer to apply equally to all such claims.

The President, Mr. Seward says, considers the terms of the offer of the British government to go to arbitration upon the question whether, in the matters connected with all those vessels out of whose depredations the claims of American citizens have arisen, the course pursued by the British Government and those who acted upon its authority was such as would involve a moral responsibility to make good, either in whole or in part, the losses of American citizens, to be at once comprehensive and sufficiently precise to include all the claims of American citizens for depredations on their commerce during the late rebellion, which have been the subject of complaint on the part of the Government of the United States.

But Mr. Seward goes on to say that the Government of the United States would deem itself at liberty to insist before the arbiter that the actual proceedings and relations of the British government, its officers, agents, and subjects, toward the United States in regard to the rebellion and the rebels, as they occurred during that rebellion, are among the matters which are connected with the vessels whose depredations are complained of; just as in the case of general claims, alluded to in my dispatch, the actual proceedings and relations of Her Majesty's government, its officers, agents, and subjects, in regard to the United States in regard to the rebellion and the rebels, are necessarily connected with the transactions out of which those general claims arose.

Mr. Seward further observes that my plan seems to be to constitute two descriptions of tribunals; one an arbiter to determine the question of the moral responsibility of the British government in regard to the vessels of the Alabama class; and the other a mixed commission to adjudicate the so-called general claims of both sides; and a con-

tingent reference to the same or other mixed commissions to ascertain and determine the amount of damages for indemnity to be awarded in the cases examined by the first tribunal in the event of a decision of moral responsibility in favor of the United States. But Mr. Seward says that the Government of the United States do not consider any distinction as to principle between the two tribunals to be necessary, and that in every case they agree only to unrestricted arbitration. It may be convenient, indeed, that the claims should be distributed between the two tribunals, both of which, however, the government of the United States consider should proceed upon the same principle and be clothed with the same powers.

Mr. Seward concludes his dispatch by saying that the Presi-
[2] dent will be gratified if the *explanations contained in it should conduce to the removal of the difficulties which have heretofore prevented the two governments from coming to an amicable and friendly understanding and arrangement.

I reserve for a future occasion any observations that I may have to offer on Mr. Seward's dispatch.

I am, &c.,
(Signed) STANLEY.

No. 2.

Lord Stanley to Mr. Ford.

FOREIGN OFFICE, *November* 16, 1867.

SIR: In my dispatch to Sir F. Bruce of the 10th September I confined myself to a mere statement of the substance of a dispatch from Mr. Seward which Mr. Adams had communicated to me in reply to my dispatch of the 24th of May respecting the claims arising on either side out of the events of the late civil war in the United States.

Her Majesty's government having, since the date of my dispatch, fully considered the terms of Mr. Seward's dispatch, I will no longer delay acquainting you, for communication to that minister, with the impression which it has made upon them.

Her Majesty's government observe that the President of the United States considers the terms used in my dispatch, with reference to the so-called Alabama claims, to be at once comprehensive and sufficiently precise to include all the claims of American citizens for depredations upon their commerce during the late rebellion, which have been the subject of complaint upon the part of the government of the United States; those terms being, to quote the precise words of my dispatch of the 24th of May, applicable to this class of claims, and which, in substance, repeats those used by me in my dispatch of the 9th of March, that the question on which Great Britain was ready to go to arbitration was, "whether, in the matters connected with the vessels out of whose depredations the claims of American citizens have arisen, the course pursued by the British government and by those who acted upon its authority was such as would involve a moral responsibility on the part of the British government to make good, either in whole or in part, the losses of American citizens."

In the same and in previous dispatches it will be found that, while agreeing to this limited reference as regards the so-called Alabama claims, I have repeatedly stated that Her Majesty's government could

not consent to refer to a foreign power to determine whether the policy of Her Majesty's government in recognizing the Confederate States as belligerents was or was not suitable to the circumstances of the time when the negotiation took place. After referring, however, to the terms of my dispatch of the 24th of May, Mr. Seward goes on to say that, in the view taken by the United States Government, that Government would deem itself at liberty to insist before the arbiter that the actual proceedings and relations of the British government, its officers, agents, and subjects, toward the United States, in regard to the rebellion and the rebels, as they occurred during that rebellion, are among the matters which are connected with the vessels whose depredations are complained of; just as, in the case of the general claims alluded to by me, the actual proceedings and relations of Her Majesty's government, its officers, agents, and subjects, in regard to the United States, in regard to the rebellion and the rebels, are necessarily connected with the transactions out of which those general claims arise.

The language thus used by Mr. Seward appears to Her Majesty's government to be open to the construction that it is the desire of the United States Government that any tribunal to be agreed upon in dealing either with the so-called Alabama claims or with the "general claims" might enter into the question whether the act of policy of Her Majesty's government in recognizing the Confederate States as a belligerent power was or was not suitable to the circumstances of the time when the recognition was made; a construction which, after the distinct and repeated avowal of Her Majesty's government that they could not consent to a reference of such a question, Her Majesty's government can hardly suppose that it was intended by Mr. Seward that the passage in his dispatch should bear.

But to prevent any misapprehension on this subject, Her Majesty's government think it necessary distinctly to say, both as regards the so-called Alabama claims brought forward by citizens of the United States and as regards the general claims, that they cannot depart, directly or indirectly, from their refusal to "refer to a foreign power to determine whether the policy of recognizing the Confederate States as a
[3] belligerent *power was or was not suitable to the circumstances of the time when the negotiation was made."

As regards the so-called Alabama claims, the only point which Her Majesty's government can consent to refer to the decision of an arbiter is the question of the moral responsibility of Her Majesty's government, on the assumption that an actual state of war existed between the government of the United States and the Confederate States; and on that assumption it would be for the arbiter to determine whether there had been any such failure on the part of the British government as a neutral in the observance, legally or morally, of any duties or relations toward the Government of the United States as could be deemed to involve a moral responsibility, on the part of the British government, to make good losses of American citizens caused by the Alabama and other vessels of the same class.

As regards the general claims, the question of moral responsibility on the part of Her Majesty's government does not, and cannot, come into dispute at all.

Mr. Seward rightly supposes that Her Majesty's government contemplated two tribunals for the adjudication, one of the Alabama claims, the other of the general claims; the one being, in the first instance, at all events, the tribunal of an arbiter, who would be called upon to pronounce on the principles of the moral responsibility of the British

government, and on the nature of whose decision would depend the question of the appointment of a mixed commission for the examination in detail of the several claims of citizens of the United States to which that decision applied, namely, those arising out of the depredations of the Alabama and other similar vessels, and the adjudication of the sums payable in each case; the other, in its commencement and to its close, a purely mixed commission for the examination of the general claims of the subjects and citizens of both countries arising out of the war, and the adjudication of the sums payable by either country in each case.

The distinction between the two classes of claims is clear: the one may never come before a mixed commission, and therefore may not require the assistance of an arbiter to decide differences of detail arising between the commissioners; the other, though originally brought before a mixed commission, may possibly require the intervention of an arbiter in case of a difference of opinion among the members of the commission which could not be otherwise reconciled, and for which case provision would be made in the ordinary way in the convention for the settlement of the mixed claims, by the insertion of articles in regard to the selection of an arbiter.

The functions of such an arbiter, as well as of an arbiter for a like purpose in the other mixed commission, for which provision would have to be made to meet the contingency of the so-called Alabama claims coming eventually under the cognizance of a mixed commission, would have nothing in common with the functions of the arbiter, to whom the question of principle involved in the last-mentioned class of claims would be referred.

Her Majesty's government cannot but apprehend that, if Mr. Seward really requires unrestricted arbitration as applicable to both classes of claims, and that the tribunal in both classes of cases should proceed upon the same principles and be clothed with the same powers, he has not fully considered the wide and inevitable distinction which exists between the classes; and in directing you to submit to the consideration of Mr. Seward the explanations and observations contained in this dispatch, I have to instruct you to express the earnest hope of Her Majesty's government that the Government of the United States will, on further reflection, accept without hesitation the proposal made in my dispatches to Sir F. Bruce of the 9th of March and of the 24th of May, both of this year, namely, "limited reference to arbitration in regard to the so-called Alabama claims," and "adjudication by means of a mixed commission of general claims."

You will furnish Mr. Seward with a copy of this dispatch.

I am, &c.,

(Signed) STANLEY.

NORTH AMERICA. No. 1. (1868.)

DISPATCH

FROM

MR. SEWARD TO MR. ADAMS,

RESPECTING

BRITISH AND AMERICAN CLAIMS

ARISING OUT OF THE

LATE CIVIL WAR IN THE UNITED STATES.

[1] *DISPATCH FROM MR. SEWARD TO MR. ADAMS RESPECTING BRITISH AND AMERICAN CLAIMS ARISING OUT OF THE LATE CIVIL WAR IN THE UNITED STATES.

Mr. Seward to Mr. Adams.—(Communicated to Lord Stanley by Mr. Adams December 24.)

DEPARTMENT OF STATE,
Washington, November 29, 1867.

SIR: Mr. Ford has given me a copy of a letter which Lord Stanley wrote to him on the 16th of November instant, concerning the question of arbitration upon the so-called Alabama claims. I have submitted Lord Stanley's remarks to the President, and have received his directions thereupon.

The Government of the United States adheres to the views concerning the proposed arbitration which I have heretofore had occasion to make known through your legation to Lord Stanley. We are now distinctly informed by Lord Stanley's letter that the limited reference of the so-called Alabama claims which Lord Stanley proposes is tendered upon the condition that the United States shall waive before the arbitrator the position they have constantly maintained from the beginning, namely, that the Queen's proclamation of 1861, which accorded belligerent rights to insurgents against the authority of the United States, was not justified on any grounds, either of necessity or moral right, and therefore, was an act of wrongful intervention, a departure from the obligation of existing treaties, and without the sanction of the law of nations. The condition being inadmissible, the proposed limited reference is therefore declined.

I am, &c.,
(Signed) WILLIAM H. SEWARD.

NORTH AMERICA. No. 1. (1869.)

CORRESPONDENCE

RESPECTING THE

NEGOTIATIONS WITH THE UNITED STATES GOVERNMENT

ON THE QUESTIONS OF

THE ALABAMA AND BRITISH CLAIMS, NATURALIZATION, AND SAN JUAN WATER BOUNDARY.

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[1] *CORRESPONDENCE RESPECTING THE NEGOTIATIONS WITH THE UNITED STATES GOVERNMENT ON THE QUESTIONS OF THE ALABAMA AND BRITISH CLAIMS, NATURALIZATION, AND SAN JUAN WATER BOUNDARY.

No. 1.

Lord Stanley to Mr. Thornton.

FOREIGN OFFICE, *February* 15, 1868.

SIR: Mr. Adams communicated to me on the 15th instant some parts of a dispatch which he had lately received, in which Mr. Seward expresses his wish that some means may be found of arranging the differences now existing between England and the United States. The questions causing these differences Mr. Seward enumerates as follows:

1. The Alabama claims.
2. The San Juan question.
3. The question of naturalized citizens; their rights and position.
4. The fishery question.

I noticed that among these the question of the reciprocity treaty with Canada was not included.

Any of these questions, Mr. Seward said, might at any time, from accidental causes, occupy public attention and give rise to exciting controversy.

Mr. Seward desired not to be understood as making any new proposition; but he repeated the suggestion which he had more than once offered, that the true method of dealing with all these matters was by treating them jointly, and endeavoring, by means of a conference, to settle them all.

I told Mr. Adams, in reply, that no one could be more anxious than I was to see these troublesome disputes at an end; and that, acting under that feeling, I should be prepared to acquiesce in any plan of settlement that held out a reasonable probability of success; at the same time I must add that I could not well understand what was to be the nature of the conference suggested by Mr. Seward. How was it to be constituted? With what powers? Where to be held? And what advantage did Mr. Seward suppose there would be in discussing simultaneously, instead of separately, a variety of matters, each of which was sufficiently intricate and perplexing when taken by itself? I expressed a hope that Mr. Seward might be induced further to develop his idea, which I assured him should meet with full and careful consideration.

I am, &c.,
(Signed) STANLEY.

No. 2.

Lord Stanley to Mr. Thornton.

FOREIGN OFFICE, *March* 14, 1868.

SIR: I received on the 9th instant your telegram of the 8th, stating that Mr. Seward was desirous of concluding a treaty between Great Britain and the United States, regulating the *status* and liabilities of the subjects and citizens of either country who may be naturalized in the other.

It appears from your further telegram of the 11th that Mr. Seward, having received the treaty recently signed on the same subject at
[2] Berlin, between Prussia, *on behalf of the North German Confederation, and the United States, presses for the conclusion of a similar treaty between those States and Great Britain.

I need hardly tell you that Her Majesty's government have received with the greatest satisfaction this overture for a settlement of a question which is beset with many difficulties; and you will assure Mr. Seward that they duly appreciate the spirit in which it has been made, and would have been most happy if they could at once have closed with it.

On examining, however, the provisions of the treaty between the United States and the North German Confederation, and on consulting the law-officers of the Crown as to the possibility of adopting them, Her Majesty's government regret to find that it is impossible for them to do so.

There are legal difficulties which render the provisions of the treaty liable to insuperable objections as they now stand, derived in a great degree from the state of uncertainty in which many important questions arising out of them would be left.

For instance, the stipulation that five years' residence with naturalization shall alter the nationality of the person naturalized, though clear enough as regards such person, leaves open very material questions which ought to be determined by express regulation. Among these may be cited:

1. What is to be the *status* of a child born after naturalization and before the expiration of five years; and what,

2. Is to be the *status* of a child born after naturalization and after the lapse of five years, whose parent afterward goes back to and becomes again a citizen or subject of his own or of a third country.

The third article of the treaty regarding extradition would find no place in a treaty between England and the United States, but the fourth article is objectionable in consequence of the doubts to which it would give rise. It would be most difficult to ascertain in many cases whether a particular person at a particular period after his return to his original country "had renewed his residence without intent to return" to the country of his naturalization, and the concluding paragraph of that article, which provides that the intent not to return may be held to exist where the person naturalized in the one country resides more than two years in the other country, by which Her Majesty's government understand that such residence would only be *prima facie* evidence of intent, would leave open questions most doubtful and difficult of solution in each case where a claim to or denial of nationality was raised.

You might state to Mr. Seward the above as among many other legal difficulties which would stand in the way of the conclusion of a treaty

between England and the United States based on the treaty with the North German Confederation.

The force of these difficulties may not have occurred to Mr. Seward, or, if it has, he may possibly be able to explain to you how it is proposed to solve them. You may assure Mr. Seward that any explanations he may give will be most fully weighed by Her Majesty's government, and with an anxious desire to bring the question to a satisfactory settlement.

It was on these grounds generally that I have stated to you in my telegram of the 12th that Her Majesty's government could not authorize you at once to conclude a treaty of naturalization such as has been proposed to you by Mr. Seward.

I am, &c.,
(Signed) STANLEY.

No. 3.

Lord Stanley to Mr. Thornton.

FOREIGN OFFICE, *March* 21, 1868.

SIR: I instructed you by telegraph on the 16th instant to suspend any communication to Mr. Seward, as described to you by my dispatch of the 14th, in regard to the difficulties which occurred to Her Majesty's government as to the conclusion of a treaty between England and the United States on the subject of naturalization. I informed you that Her Majesty's government would endeavor to frame a draught of treaty which might be acceptable to both countries, and that, in the meanwhile, you would only assure Mr. Seward that the matter was under the serious consideration of your government.

[3] *I regret to say that the more the subject has been examined the greater have been found to be the legal difficulties with which the whole question is surrounded.

The matter might be disposed of with comparative ease, if no other party but the one naturalized were to be affected by the renunciation or remission of natural allegiance, though even in that case it would be necessary to determine whether such renunciation or remission should be absolute, or whether readmission into the fold of original allegiance should be permitted; and, if so, on what terms, and under what conditions.

But other and more complicated matters arise when questions of descent, succession, title to property, and the general bearing of municipal laws adapted to the existing state of things have to be considered, and much difficulty might arise and much litigation occur in the courts, and many questions might come into discussion between governments, unless such matters were duly weighed and discussed, and definite principles, by which all such difficulties should be obviated, were adopted between the countries concerned, and were sanctioned by their respective legislatures.

As regards this country, if the principles of the Prussian treaty were to be adopted as the groundwork of a treaty between Great Britain and the United States, it would be necessary to consider the bearing which such a treaty would have, not only on the common and statute law, but also on the legislation of the British colonies; and, considering the close resemblance between the law and procedure of this country and those of

the United States, the same process would doubtless have to be gone through there; and in both it would probably be found that a considerable revision of the law would be required to enable a naturalization treaty to work smoothly.

The only instruction, therefore, that Her Majesty's government feel can now be safely given to you is, that you should assure Mr. Seward of their anxious desire to act in concert with the Government of the United States in endeavoring to devise some effectual means for setting at rest this important and intricate question. The obstacles to immediate action which they see are of a legal, not of a political character. They disclaim the idea of desiring to maintain and enforce the doctrine of indefeasible allegiance, and are quite willing to adopt the principle of expatriation, which they think ought properly to be conceded by a government which for many years past has sanctioned, and even encouraged, an extensive emigration of British subjects to foreign states.

It is their intention at once to institute an inquiry into the legal bearings of the question, and they hope that the result of this inquiry may be the production, without unnecessary loss of time, of a well-considered and satisfactory measure.

You are at liberty to communicate this dispatch to Mr. Seward, and to give him a copy.

I am, &c.,
(Signed) STANLEY.

No. 4.

Lord Stanley to Mr. Thornton.

FOREIGN OFFICE, *March* 21, 1868.

SIR: I received this morning your telegram of yesterday, stating that Mr. Seward is prepared to sign a naturalization treaty between the United States and England, similar to that between the United States and Prussia, though modified in certain points which you specify.

It is with great regret that I have felt constrained by circumstances which will have been explained in my dispatch of the 14th, and which are fully explained in my previous dispatch of this day, to reply to you by telegraph that, although Her Majesty's government have no objection in principle to alter the law of naturalization, yet that the legal details involved in this question require such careful consideration that it is impossible for Her Majesty's government, without further inquiry, to authorize you to sign any treaty on the subject.

I am, &c.,
(Signed) STANLEY.

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[4] *No. 5.

Lord Stanley to Mr. Thornton.

[Extract.]

FOREIGN OFFICE, *March* 31, 1868.

Mr. Adams communicated to me to-day a dispatch from Mr. Seward, which was to the following effect:

Mr. Seward says that the naturalization question causes much uneasi-

ness in America, and is the most urgent of any of those now pending. Till that question is settled it is almost hopeless to attempt to remove other causes of difference. It admits of no delay compatibly with the maintenance of good understanding between the two countries. On this ground Mr. Seward disapproves of the proposal to deal with it by means of an international commission. There now exists, he says, the possibility of an arrangement. The Prussian treaty is supposed to be unobjectionable to Great Britain. All that would be necessary to bring it into operation as regards England would be a supplementary stipulation, to the effect that the naturalized citizen should enjoy in the country from which he comes all rights and privileges such as belong to natives.

Mr. Seward says that he is in communication with you on the subject; that he will supply a draught which he will be ready to execute immediately; and that he has suggested that you should apply by telegraph for instructions.

He adds, that he reserves his opinion on the manner of proceeding in regard to the Alabama question, as his decision with regard to that will be much influenced by the proceedings in the naturalization question.

No. 6.

Mr. Thornton to Lord Stanley.

[Extract.]

WASHINGTON, *March* 30, 1868. (Received April 11.)

On the receipt of your dispatch of the 14th instant I called upon Mr. Seward, and made known to him the objections which the law-officers of the Crown find to our concluding a convention on naturalization on the basis of that lately signed between this country and the North German Confederation.

After conversing upon the subject, Mr. Seward drew up a memorandum, copy of which I have the honor to inclose, in answer to the inquiries made in that dispatch.

But as your lordship alludes to "many other legal difficulties" which would stand in the way of such a treaty, I have the honor to suggest to your lordship that a draught should be forwarded to me which should contain all that is desired by Her Majesty's government upon the subject, so that I may be able to submit it to Mr. Seward or to his successor, or at least to sound him as to his disposition to agree to their requirements.

Reverting to the inquiries made in the above-mentioned dispatch, I have the honor to state that naturalization cannot be obtained in this country without a residence of five years. A child born in this country of an Englishman before naturalization, would be an American in this country and an Englishman out of it; indeed, Mr. Seward's opinion seemed to be that the child would generally be a citizen of the country, native or adopted, of his father, except so far as the country in which the child is born has a right on that account to claim him as a citizen. Thus the son of an Englishman, naturalized in the United States, who might be born during the two years after the return of the father to England, would be English in England, on account of his birth there, but American elsewhere, on account of his parentage, his father being still held to be an American citizen.

With regard to these two years, Mr. Seward certainly thinks that

discussions might hereafter arise upon the subject. If it were so, he considers that the two years' continuous residence should only be deemed *prima facie* evidence of the intent of a man naturalized in the other country to return to that of his birth; and that, as in cases of domicile, the question of his real intention should be decided by the judicial courts.

But Mr. Seward is of opinion that it would be expedient at once to lay down the great principle of expatriation and naturalization, and to leave other details for a future convention, in the negotiation of which both governments would have the advantage of having studied the effect of the practice of the first principle.

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[5] *[Inclosure in No. 6.]

Memorandum.

As to the first objection, Mr. Seward remarks that five years' continuous residence, by the laws of the United States, is a necessary preliminary to naturalization; so that the case supposed in the first British objection cannot occur.

As to the second point, Mr. Seward remarks that a parent going back, or becoming again a citizen or subject of his own or a third country, does not deprive the child of the citizenship acquired by birth in either country. Citizenship of the child does not necessarily change with the return of the parent to his original country.

The third article is to be omitted in the treaty.

There is no difficulty involved in the fourth article, except such as is in all cases and everywhere incident to domicile.

A British subject naturalized in America and returning to Great Britain for two years does not necessarily renounce his American citizenship, only he may be called upon to assert or prove his purpose more explicitly.

(A new article.) The parties agree to negotiate a further convention, if it shall be rendered necessary by reason of embarrassments experienced in the execution of the stipulations of this treaty.

No. 7.

Mr. Thornton to Lord Stanley.

[Extract.]

WASHINGTON, *April* 7, 1868. (Received April 18.)

In accordance with your lordship's permission, I have given to Mr. Seward a copy of your dispatch of the 21st ultimo, leaving out the first paragraph. He has promised me a report, drawn up by a lawyer, on the bearing of the stipulations contained in the treaty with Prussia upon the common and statute law of this country.

No. 8.

Mr. Thornton to Lord Stanley.

[Extract.]

WASHINGTON, *April* 13, 1868. (Received April 25.)

With reference to my dispatch of the 7th instant, in which I stated that Mr. Seward had promised me a report, drawn up by a lawyer, on

the bearing of the provisions of the treaty on naturalization between the United States and the North German Confederation, upon the laws of this country, I have now the honor to inform your lordship that, upon further reflection, he has confessed to me his inability to comply with my wishes on this subject. He says that the consideration of the subject in this light would bring to the surface a number of hypothetical cases on which it could not be supposed that any government would be willing to commit itself, and which he thinks it would be impossible to decide upon at present; nor, indeed, until further experience shall show what requirements may arise out of the provisions of the treaty as it stands.

It is on this account that Mr. Seward still urges that England and the United States should come to a simple treaty engagement on the great principles of expatriation and naturalization, and that the discussion and negotiation of further details should be deferred to a later period, when experience may have thrown more light upon the subject.

With reference to the provision in the fourth article of the treaty with Prussia, as to the renewal of residence by a naturalized subject in his native country, I should say that this was rather a concession on the part of the United States to Prussia than a necessary part of the treaty. It is by no means meant as a mode of insisting by the United States that a Prussian naturalized in America should be received back again into his native country, but merely as a declaration that, after his having shown an intention to remain there, the United States would no longer grant him their protection, nor prevent the Prussian
[6] authorities from obliging him *to share in the burdens imposed upon other subjects, whose position would be invidious as compared with that of the former.

It does not seem that such a provision would be indispensable in a treaty with England; on the contrary, the question of repatriation had better perhaps be left to the internal legislation of each country.

No. 9.

Lord Stanley to Mr. Thornton.

FOREIGN OFFICE, *June* 16, 1868.

SIR: The United States chargé d'affaires has inquired of me, by direction of Mr. Seward, whether Her Majesty's government were prepared at once to enter into a treaty with the United States on the subject of naturalization.

I reminded Mr. Moran, in reply, of the statements which some weeks ago I made in the House of Commons, and which were received, as I believed, with general approval, that Her Majesty's government were prepared to entertain in principle the question of a naturalization treaty, and no longer held to the doctrine of indefeasible allegiance.

But, I observed to Mr. Moran that, with every good disposition on their part to contribute to setting at rest a question which, as it now stood, was calculated to interfere with the maintenance of good understanding between this country and the United States, Her Majesty's government found it was inexpedient, not to say impossible, to proceed hastily in a matter which involved points of great legal difficulty, and might affect the interests not only of persons now in being, but of persons still unborn. It was necessary, therefore, to consider how British

law bore on the question, and the similarity between the laws of the two countries need scarcely be insisted upon in support of the statement that there are many legal points to be considered and determined before either a treaty can be concluded, or legislation attempted, by this country.

Her Majesty's government, I said, have lost no time in seeking to elucidate the questions to be considered. A royal commission, composed of very eminent persons, had been appointed, and were now engaged in investigating those questions; it was impossible to say how long the inquiry would take, but even apart from the question of the inexpediency of anticipating the report of the commissioners, I thought it right to remark that, in the actual state of public affairs in Parliament, and considering the general anxiety felt to restrict legislation to what was absolutely required, with a view to an early dissolution, it would be impracticable, even if the report of the commission had been agreed upon and published, to introduce into the House of Commons, with any chance of its immediately becoming law, a bill for giving effect to the recommendations of that report. It could not be expected to pass without much discussion, and for this there was not now time.

It seemed to me, therefore, inevitable that legislation on the subject must be deferred till the meeting of the new Parliament; and, as the treaty must be made dependent on such legislation, it was useless to conclude it at once.

I am, &c.,
(Signed) STANLEY.

No. 10.

Lord Stanley to Mr. Thornton.

FOREIGN OFFICE, *September* 19, 1868.

SIR: The United States minister called upon me this day, and stated to me that he would hold himself ready, in case Her Majesty's government are willing to agree, to conclude a treaty of naturalization between the two countries generally similar to those made by the United States with other powers, such treaty to be conditional on the passing by Parliament of an act to enforce its provisions. He was not authorized, he said, to discuss with me officially the Alabama question until this matter had been disposed of.

I was unable to give an immediate reply to Mr. Reverdy
[7] Johnson's proposal, *as the royal commission appointed to inquire into the subject of naturalization and allegiance has not yet reported. I did not, however, discourage it.

I am, &c.,
(Signed) STANLEY.

No. 11.

Lord Stanley to Mr. Thornton.

FOREIGN OFFICE, *October* 9, 1868.

SIR: Since my dispatch of the 19th ultimo I have been in communication with Mr. Reverdy Johnson on the subject of the proposal which he had made for the conclusion of a treaty of naturalization, generally

similar to those between the United States and other powers, but conditional on the passing by Parliament of an act to carry out its provisions.

Her Majesty's government, although anxious, with a view to the promotion of good relations between the two countries, that this question, which has so long been discussed between them, should be set at rest, have found themselves unable to assent to the conclusion of a formal convention, as originally proposed by Mr. Johnson.

They have, however, considered that they might properly place on record their desire to come to an agreement with the United States on this subject; and have, accordingly, in communication with the proper law-advisers of the Crown, framed a protocol which, having been previously submitted, unofficially, to Mr. Reverdy Johnson, was signed by that gentleman with me this morning.

A copy of this protocol is inclosed. You will observe that it is not to take effect until provision can be made by Parliament, on the report of the royal commission, for such a revision of the existing laws as the adoption of the principles embodied in it involves.

I am, &c.,

(Signed) STANLEY.

[Inclosure in No. 11.]

Protocol showing the principles agreed upon by the British and the United States governments on the question of naturalization.—Signed at London, October 9, 1868.

The undersigned, Edward Henry Lord Stanley, of Bickerstaffe, Her Britannic Majesty's principal secretary of state for foreign affairs, and Reverdy Johnson, esquire, envoy extraordinary and minister plenipotentiary from the United States of America, being respectively authorized and empowered to place on record the desire of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and of the President of the United States of America to regulate the citizenship of British subjects who have emigrated or who may emigrate from the British dominions to the United States of America, and of citizens of the United States of America who have emigrated or who may emigrate to the British dominions, have agreed upon the following protocol:

I. Such British subjects as aforesaid who have become, or shall become, and are naturalized according to law within the United States of America as citizens thereof, shall, subject to the provisions of Articles II and IV, be held by Great Britain to be in all respects and for all purposes American citizens, and shall be treated as such by Great Britain.

Reciprocally, such citizens as aforesaid of the United States who have become, or shall become, and are naturalized according to law within the British dominions as British subjects, shall, subject to the provisions of Articles II and IV, be held by the United States to be in all respects and for all purposes British subjects, and shall be treated as such by the United States.

II. Such British subjects as aforesaid who have become and are naturalized as citizens within the United States, and such United States citizens as aforesaid who have become and are naturalized within the British dominions as British subjects, shall be at liberty to renounce their naturalization and to resume their respective
[8] *nationalities, provided that such renunciation be publicly declared within two years after this protocol shall have been carried into effect, as provided by Article IV.

The manner in which this renunciation may be made and publicly declared shall be hereafter agreed upon by the respective governments.

III. If such British subject as aforesaid naturalized in the United States should renew his residence within the British dominions, the British government may, on his own application and on such conditions as that government may think fit to impose, re-admit him to the character and privileges of a British subject, and the United States shall not, in that case, claim him as a citizen of the United States on account of his former naturalization.

In the same manner, if such American citizen as aforesaid, naturalized within the British dominions, should renew his residence in the United States, the United States Government may, on his own application and on such conditions as that Government

may think fit to impose, re-admit him to the character and privileges of an American citizen, and Great Britain shall not, in that case, claim him as a British subject on account of his former naturalization.

IV. As it will not be practicable for Great Britain to carry into operation the principles laid down in this protocol until provision has been made by the imperial Parliament for such a revision of the existing laws as the adoption of those principles involves, it is agreed that this protocol shall not take effect until such legislation can be accomplished.

The British government will introduce measures into Parliament for this purpose as speedily as may be possible, having regard to the variety of public and private interests which may be affected by a change in the laws of naturalization and allegiance now under the consideration of the royal commission, whose report is expected shortly to be made.

The same provision not being necessary by the Constitution and laws of the United States, this article is not made reciprocal.

Done at London the 9th of October, 1868.

(Signed) STANLEY.
REVERDY JOHNSON.

No. 12.

Extract from Mr. Reverdy Johnson's instructions.—(Communicated to Lord Stanley by Mr. Reverdy Johnson, October 16, 1868.)

Secondly. In case Her Majesty's government shall adopt the required measures to adjust the naturalization question, you will next be expected to give your attention to the adjustment of the northwest boundary controversy, which involves the right of national dominion and property over the island of San Juan on the frontier line between the United States and British Columbia.

It is understood that on the breaking out of the recent civil war in the United States this boundary question was on the eve of being arranged by referring it to an impartial and friendly arbiter. The question is increasing in urgency, with the growing settlement and population of the Northwest, and with the multiplication of causes of litigation within the disputed territory. The United States still remain in a disposition favorable to the process of adjustment originally contemplated.

* * * * * * *

Our conclusion is, that in the event that you become convinced that an arrangement of the naturalization question which would be satisfactory to the United States, in view of your previous instructions, can be made, then and in that case you may open concurrent negotiations upon the two questions first herein named, to wit, San Juan and the claims question; but that those two negotiations shall not be completed or your proceedings therein be deemed obligatory until after the naturalization question shall have been satisfactorily settled by treaty or by law of Parliament.

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[9] *No. 13.

Lord Stanley to Mr. Thornton.

FOREIGN OFFICE, *October* 17, 1868.

SIR: I transmit to you herewith a copy of a protocol which I have this day signed with Mr. Reverdy Johnson, recording the desire of

Her Majesty's government and that of the United States to close the discussion respecting the water-boundary under the Oregon treaty.

I am, &c.,
(Signed) STANLEY.

[Inclosure in No. 13.]

Protocol recording desire of Her Majesty's and the United States governments to close discussion respecting water-boundary.

The undersigned, Edward Henry Lord Stanley, Her Britannic Majesty's principal secretary of state for foreign affairs, and Reverdy Johnson, esquire, envoy extraordinary and minister plenipotentiary from the United States of America, being respectively authorized and empowered to place on record the bases on which Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America are prepared to close all further discussion with regard to the true direction of the line of water-boundary between their respective possessions, as laid down in Article I of the treaty concluded between them on the 15th of June, 1846, have agreed upon the following protocol:

I. Whereas it was stipulated by Article I of the treaty concluded at Washington on the 15th of June, 1846, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, that the line of boundary between the territories of Her Britannic Majesty and those of the United States, from the point on the forty-ninth parallel of north latitude up to which it had already been ascertained, should be continued westward along the said parallel of north latitude "to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly through the middle of the said channel and of Fuca's Straits to the Pacific Ocean;" and whereas the commissioners appointed by the two high contracting parties to mark out that portion of the boundary which runs southerly through the middle of the channel aforesaid have not been able to determine which is the true line contemplated by the treaty:

It is agreed to refer to some friendly sovereign or state to determine the line which, according to the terms of the aforesaid treaty, runs southerly through the middle of the channel which separates the continent from Vancouver's Island and of Fuca's Straits to the Pacific Ocean; and it is further agreed that within three months after the exchange of the ratifications of any treaty that may hereafter be concluded for giving effect to the terms of this protocol the contracting parties shall select some friendly sovereign or state to act as referee in the premises.

II. If such sovereign or state should be unable to ascertain and determine the precise line intended by the words of the treaty, it is agreed that it shall be left to such sovereign or state to determine upon some line which, in the opinion of such sovereign or state, will furnish an equitable solution of the difficulty, and will be the nearest approximation that can be made to an accurate construction of the words of the treaty.

III. It is agreed that such sovereign or state shall be at liberty to call for the production of and to consult all the correspondence which has taken place between the British and American governments on the matter at issue, and to weigh the testimony of the British and American negotiators of the treaty as recorded in that correspondence as to their intentions in framing the article in question; and such sovereign or state shall further be at liberty to call for the reports and correspondence, together with any documents, maps, or surveys bearing on the same, which have emanated from or were considered by the commissioners who have recently been employed by the two governments to endeavor to ascertain the line of boundary as contemplated by the treaty, and to consider all evidence that either party may produce.

But the referee shall not depart from the true meaning of the article as it stands,
[10] if he can deduce that meaning from the words of the article, *those words having been agreed to by both parties, and having been inserted in a treaty certified by both governments.

IV. The respective parties formally engage to consider the decision of the referee, when given, as final and conclusive, whether such decision shall be a positive decision as to the line of boundary intended by the true meaning of the words of Article I of the treaty of 1846, or whether the said referee, being unable to give such positive decision, shall give as a decision a line of boundary as the nearest approximation to an accurate construction of those words and as furnishing an equitable solution of the difficulty; and such decision shall, without reserve, be carried into immediate effect by commissioners to be appointed for the purpose of marking out the line of boundary in accordance with such decision of the referee.

V. It is understood that this agreement shall not go into operation or have any effect

until the question of naturalization now pending between the two governments shall have been satisfactorily settled by treaty, or by law of Parliament, or by both, unless the two parties shall in the mean time otherwise agree.

Done at London, the 17th of October, 1868.

(Signed) STANLEY.
REVERDY JOHNSON.

No. 14.

Lord Stanley to Mr. Thornton.

FOREIGN OFFICE, *October* 21, 1868.

SIR: The United States minister called on the 20th instant to discuss with me the question of the Alabama claims, and much conversation passed between us on the subject, in the course of which Mr. Reverdy Johnson again put forward the proposal adverted to in Mr. Seward's former dispatches, viz, that all the claims on both sides should be referred to the decision of commissioners, who should be, in equal numbers, British subjects and American citizens, who, if they disagreed, should have power to call in an umpire, and whose decision, with such assistance, shall be final.

I pointed out to Mr. Reverdy Johnson the inapplicability of this method of proceedings as applied to the Alabama claims and others of the same class. I expressed my opinion that inasmuch as the question at issue was really the culpability or non-culpability of Her Majesty's government in regard to the matter complained of, it would be in the highest degree unseemly that a British subject should be called upon to pronounce judgment on the authorities of his own country; nor would the position of the American commissioners be much better; for if they decided against the view taken by the United States Government they would, in fact, be condemning the policy maintained by that Government during the last four years.

Moreover, it would be hardly possible to find in either country any individual of sufficient eminence for such a duty who was not, in speech or writing, already committed to some view on the question; nor could impartiality be reasonably expected in a matter in which the feelings of both countries were so deeply involved.

For these reasons it seemed to me preferable that the arbitrator proposed should be the sovereign or president of a friendly state. I named especially the President of the Swiss Republic and the King of Prussia.

Mr. Reverdy Johnson said he was not instructed to accede to the proposal I had made, but would telegraph for permission to do so. He did so accordingly before leaving the office, and has promised me an early reply.

In this conversation little was said as to the point on which the former negotiations broke off, viz, the claim made by the United States Government to raise before the arbiter the question of the alleged premature recognition by Her Majesty's government of the confederates as belligerents. I stated to Mr. Reverdy Johnson that we could not on this point depart from the position which we had taken up; but I saw no impossibility in so framing the reference as that, by mutual consent, either tacit or express, the difficulty might be avoided.

I am, &c.,

(Signed) STANLEY.

[11] *No. 15.

Lord Stanley to Mr. Thornton.

FOREIGN OFFICE, *November* 10, 1868.

SIR: Mr. Reverdy Johnson called at the foreign office on the 29th ultimo, and made a proposal on behalf of his Government for a basis on which a settlement of the British and American claims might be arrived at by arbitration through a mixed commission.

This proposal was reduced to a more formal shape at a further interview between Mr. Reverdy Johnson and myself on the 3d instant, at which Her Majesty's attorney-general was present, and has now been adopted in a convention, which I have this day signed with Mr. Johnson, and of which I inclose a copy for your information.

You will observe that the general claims are to be adjudicated upon by the commissioners, who on this occasion are to be four in number, assisted by an arbitrator, in the manner provided by the former claims convention of the 8th of February, 1853.

The class of claims known as the Alabama claims are also to be dealt with by the commissioners, but their consideration of these claims is to be limited to the official correspondence which has already taken place between the two governments, and, in the event of their not coming to a unanimous decision, is to be referred to some sovereign or head of a friendly state who is to be chosen by the two governments as arbitrator for the purpose, without argument or further evidence. The commissioners unanimously, or the arbitrator, are, however, to be at liberty to call for argument or further evidence if they or he shall deem it necessary.

I am, &c.,
(Signed) STANLEY.

[Inclosure in No. 15.]

Convention between Great Britain and the United States of America, for the settlement of all outstanding claims.—Signed at London, November 10, 1868.

Whereas claims have at various times since the exchange of the ratifications of the convention between Great Britain and the United States of America, signed at London on the 8th of February, 1853, been made upon the government of Her Britannic Majesty on the part of citizens of the United States, and upon the Government of the United States on the part of subjects of Her Britannic Majesty; and whereas some of such claims are still pending, and remain unsettled: Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America, being of opinion that a speedy and equitable settlement of all such claims will contribute much to the maintenance of the friendly feelings which subsist between the two countries, have resolved to make arrangements for that purpose by means of a convention, and have named as their plenipotentiaries to confer and agree thereupon, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honorable Edward Henry Stanley, commonly called Lord Stanley, a member of Her Britannic Majesty's most honorable privy council, a member of Parliament, her principal secretary of state for foreign affairs;

And the President of the United States of America, Reverdy Johnson, esquire, envoy extraordinary and minister plenipotentiary from the United States to Her Britannic Majesty.

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed as follows:

ARTICLE I.

The high contracting parties agree that all claims on the part of subjects of Her Britannic Majesty upon the Government of the United States, and all claims on the part of citizens of the United States upon the government of Her Britannic Majesty,

which may have been presented to either government for its interposition
[12] *with the other since the 26th of July, 1853, the day of the exchange of the ratifications of the convention concluded between Great Britain and the United States of America, at London, on the 8th of February, 1853, and which yet remain unsettled; as well as any other such claims which may be presented within the time specified in Article III of this convention, whether or not arising out of the late civil war in the United States, shall be referred to four commissioners, to be appointed in the following manner, that is to say: two commissioners shall be named by Her Britannic Majesty, and two by the President of the United States. In case of the death, absence, or incapacity of any commissioner, or in the event of any commissioner omitting or ceasing to act as such, Her Britannic Majesty, or the President of the United States, as the case may be, shall forthwith name another person to act as commissioner in the place or stead of the commissioner originally named.

The commissioners so named shall meet at London at the earliest convenient period after they shall have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, without fear, favor, or affection to their own country, upon all such claims as shall be laid before them on the part of the governments of Her Britannic Majesty and of the United States, respectively; and such declaration shall be entered on the record of their proceedings.

The commissioners shall then, and before proceeding to any other business, name some person to act as an arbitrator or umpire, to whose final decision, save as otherwise provided in Article IV of this convention, shall be referred any claim upon which they may not be able to come to a decision. If they should not be able to agree upon an arbitrator or umpire, the commissioners on either side shall name a person as arbitrator or umpire; and in each and every case in which the commissioners may not be able to come to a decision, the commissioners shall determine by lot which of the two persons so named shall be the arbitrator or umpire in that particular case. The person or persons so to be chosen as arbitrator or umpire shall, before proceeding to act as such in any case, make and subscribe a solemn declaration, in a form similar to that made and subscribed by the commissioners, which shall be entered on the record of their proceedings. In the event of the death, absence, or incapacity of such person or persons, or of his or their omitting, or declining, or ceasing to act as such arbitrator or umpire, another person shall be named, in the same manner as the person originally named, to act as arbitrator or umpire in his place and stead, and shall make and subscribe such declaration as aforesaid.

Article II.

The commissioners shall then forthwith proceed to the investigation of the claims which shall be presented to their notice. They shall investigate and decide upon such claims in such order and in such manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of their respective governments. They shall be bound to receive and peruse all written documents or statements which may be presented to them by or on behalf of their respective governments, in support of or in answer to any claim, and to hear, if required, one person on each side on behalf of each government, as counsel or agent for such government, on each and every separate claim. Should they fail to decide by a majority upon any individual claim, they shall call to their assistance the arbitrator or umpire whom they may have agreed upon, or who may be determined by lot, as the case may be; and such arbitrator or umpire, after having examined the evidence adduced for and against the claim, and after having heard, if required, one person on each side as aforesaid, and consulted with the commissioners, shall decide thereupon finally and without appeal.

The decision of the commissioners, and of the arbitrator or umpire, shall be given upon each claim in writing, and shall be signed by them respectively and dated.

It shall be competent for each government to name one person to attend the commissioners as agent on its behalf, to present and support claims on its behalf, and to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof.

The provisions of this article shall, however, be subject to the special arrange-
[13] ments made by Articles IV, V, and VI of this convention, respecting the *claims which form the subject of those articles, and which shall be dealt with as directed in those articles.

Article III.

Every claim shall be presented to the commissioners within six months from the day of their first meeting, unless in any case where reasons for delay shall be established

to the satisfaction of the commissioners, or of the arbitrator or umpire, in the event of the commissioners differing in opinion thereupon; and then, and in any such case, the period for presenting the claim may be extended to any time not exceeding three months longer.

The commissioners shall be bound to examine and decide upon every claim within two years from the day of their first meeting. It shall be competent for the commissioners, or for the arbitrator, or umpire, if they differ, to decide in each case whether any claim has or has not been duly made, preferred, or laid before them, either wholly, or to any and what extent, according to the true intent and meaning of this convention.

ARTICLE IV.

The commissioners shall have power to adjudicate upon the class of claims referred to in the official correspondence between the two governments as the Alabama claims; but before any such claims are taken into consideration by them the two high contracting parties shall fix upon some sovereign or head of a friendly state as an arbitrator in respect of such claims, to whom such class of claims shall be referred, in case the commissioners shall be unable to come to a unanimous decision upon the same.

ARTICLE V.

In the event of a decision on any of the claims mentioned in the next preceding article being arrived at by the arbitrator, involving a question of compensation to be paid, the amount of such compensation shall be referred back to the commissioners for adjudication; and in the event of their not being able to come to a decision, it shall then be decided by the arbitrator appointed by them, or who shall have been determined by lot, according to provisions of article I.

ARTICLE VI.

With regard to the before-mentioned Alabama class of claims, neither government shall make out a case in support of its position, nor shall any person be heard for or against any such claim. The official correspondence which has already taken place between the two governments respecting the questions at issue shall alone be laid before the commissioners; and, (in the event of their not coming to a unanimous decision, as provided in Article IV,) then before the arbitrator, without argument, written or verbal, and without the production of any further evidence.

The commissioners unanimously, or the arbitrator, shall, however, be at liberty to call for argument or further evidence, if they or he shall deem it necessasy.

ARTICLE VII.

Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America, hereby solemnly and sincerely engage to consider the decision of the commissioners, or of the arbitrator or umpire, as the case may be, as absolutely final and conclusive upon each of such claims decided upon by them or him respectively, and to give full effect to such decisions without any objection or delay whatsoever.

ARTICLE VIII.

It is agreed that no claim arising out of any transaction of a date prior to the 26th of July, 1853, the day of the exchange of the ratifications of the convention of the 8th of February, 1853, shall be admissible under this convention.

ARTICLE IX.

All sums of money which may be awarded by the commissioners, or by the arbitrator, or umpire, on account of any claim, shall be paid in coin, or its equivalent,
[14] *by the one government to the other, as the case may be, within twelve months after the date of the decision, without interest.

ARTICLE X.

The high contracting parties engage to consider the result of the proceedings of this commission as a full and final settlement of every claim upon either government arising out of any transaction of a date prior to the exchange of the ratifications of the present convention; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said commission, shall, from and after the conclusion of the proceedings of the said commission, be considered and treated as finally settled and barred.

ARTICLE XI.

The commissioners shall keep an accurate record and correct minutes or notes of all their proceedings, with the dates thereof, and shall appoint and employ clerks or other persons to assist them in the transaction of the business which may come before them.

The secretary shall be appointed by the principal secretary of state for foreign affairs of Her Britannic Majesty, and by the representative of the United States in London, jointly.

Each government shall pay the salaries of its own commissioners. All other expenses, and the contingent expenses of the commission, including the salary of the secretary, shall be defrayed in moieties by the two parties.

ARTICLE XII.

The present convention shall be ratified by Her Britannic Majesty and by the President of the United States, by and with the advice and consent of the Senate thereof; and the ratifications shall be exchanged at London as soon as may be, within twelve months from the date hereof.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at London, the tenth day of November, in the year of our Lord one thousand eight hundred and sixty-eight.

[L. S.] STANLEY.
[L. S.] REVERDY JOHNSON.

No. 16.

Lord Stanley to Mr. Thornton.

FOREIGN OFFICE, *November* 10, 1868.

SIR: With reference to my dispatch of the 17th ultimo, I transmit, for your information, a copy of a protocol which I have this day signed with Mr. Reverdy Johnson, recording the agreement of Her Majesty's government and that of the United States, to refer the disputed question of boundary to the decision of the president of the Swiss confederation.

I am, &c.,
(Signed) STANLEY.

[Inclosure in No. 16.]

Protocol recording the agreement of Her Majesty's government and the United States to refer the disputed question of boundary to the decision of the president of the Swiss confederation.

The undersigned, Edward Henry Lord Stanley, Her Britannic Majesty's principal secretary of state for foreign affairs, and Reverdy Johnson, esquire, envoy extraordinary and minister plenipotentiary of the United States of America, being respectively authorized and empowered by their governments, hereby declare that the said
[15] governments agree to refer the disputed question of boundary which *forms the subject of the protocol signed by them on the 17th of October last, to the decision of the president of the federal council of the Swiss confederation.

Done at London the 10th of November, 1868.

(Signed) STANLEY.
REVERDY JOHNSON.

No. 17.

Lord Stanley to Mr. Thornton.

FOREIGN OFFICE, *November* 24, 1868.

SIR: With reference to my dispatch of the 10th instant, I transmit herewith, for your information, three copies of an additional article to

the convention which was signed on the above date, for the settlement of all outstanding claims between Great Britain and the United States.

I am, &c.,
(Signed) STANLEY.

[Inclosure in No. 17.]

Additional article to claims convention, November 23, 1868.

Whereas by Article I of the convention between Her Britannic Majesty and the United States of America, signed at London on the 10th day of November, 1868, for the settlement of all outstanding claims, it was agreed that the commission thereby stipulated to be appointed for the investigation and decision of such claims should meet at London;

And whereas it has since appeared desirable that the place of meeting of the said commission should be Washington;

The plenipotentiaries who signed that convention, having met together, have agreed to substitute Washington for London as the place for the meeting and sitting of the commission aforesaid. They have further agreed that the secretary of the commission shall be appointed by the representative of Great Britain at Washington and by the Secretary of State of the United States, jointly, instead of in the manner provided by Article XI of the convention.

The present additional article shall have the same force and effect as if it had been inserted, word for word, in the convention of the 10th of November, 1868. It shall be ratified and the ratifications shall be exchanged at the same time as those of the convention.

In witness whereof, the respective plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at London, the twenty-third day of November, in the year of our Lord one thousand eight hundred and sixty-eight.

[L. S.] STANLEY.
[L. S.] REVERDY JOHNSON.

No. 18.

Lord Stanley to Mr. Thornton.

FOREIGN OFFICE, *November* 27, 1868.

SIR: I have received your telegraphic dispatch of to-day's date, informing me that difficulties have been raised by the Government of the United States in regard to the claims convention recently signed by Mr. Reverdy Johnson and myself, and that they are of opinion, in which you concur, that the convention as it now stands would not be sanctioned by the Senate.

You also mention that the United States cabinet are anxious that the convention should be passed, and have asked you to come home to explain their objections to it, and to endeavor to induce Her Majesty's government to make modifications in it.

I have this day informed you by telegraph that I see no neces-
[16] sity for your *returning to England, and have instructed you to inform me by telegraph of the points objected to by the United States Government, and of the grounds on which their objections have been raised.

I am, &c.,
(Signed) STANLEY.

No. 19.

Mr. Reverdy Johnson's instructions.—(Communicated to Lord Stanley by Mr. Reverdy Johnson, December 1, 1868.)

The following amendments to British printed copy are essential in the claims treaty: Article I, line twenty, insert after "President," "by and with the advice and consent of the Senate." Same Article I, second paragraph, strike out "London," and insert "Washington." Same Article I, third page, strike out "save as otherwise provided in Article IV of this convention."

Article II, strike out the last paragraph entire.

Article IV, strike out all after word "claims" in fourth line, or, if preferred, omit the whole of Article IV.

Article V. If Article IV is amended and changed as above proposed, Article V may stand without amendment. If Article IV is omitted entirely, then amend Article V, line two, by striking out the words "mentioned in the next preceding article."

Article VI. Either omit the whole article, or substitute the following therefor: In case of every claim the official correspondence which has taken place between the two governments respecting the questions at issue shall be brought before the commissioners, and in the event of their not agreeing to have decision thereupon, then before the arbitrator. Either government may submit further evidence and further argument thereupon, written or verbal.

Article IX. Strike out "twelve," and insert "eighteen."

Article XI, second paragraph. Strike out all after the word "the" and insert "the representative of Her Britannic Majesty at Washington and the Secretary of State of the United States jointly."

If these amendments be not assented to, let San Juan remain in protocol. If they are accepted, sign the claims convention and change San Juan protocol into convention, and sign the same.

Full go by post; but time is important.

No. 20.

Lord Stanley to Mr. Thornton.

FOREIGN OFFICE, *December* 8, 1868.

SIR: I understand from your telegraphic dispatch of the 27th ultimo that Mr. Seward and the cabinet of Washington disapprove of the convention which the United States minister signed with me on the 10th ultimo, for the settlement of British and American claims, on the ground that it is not in accordance with the instructions sent to Mr. Johnson, and that they are confident that the Senate will refuse to sanction it. I have learnt from your further telegram received on the 30th ultimo the very important modifications which Mr. Seward wishes to be made in that agreement.[1]

I have received this intelligence with some surprise, as during the progress of our negotiations Mr. Johnson at no time intimated to me that he was not acting under sufficient instructions from his Government; indeed, when framing with him the memorandum which was the

[1] These are stated in No. 19.

groundwork of, and is, in fact, embodied in the convention, I distinctly understood from him that he thought their approval was certain, and subsequent to the signature of the convention, I was further informed by him that Mr. Seward had stated in a telegraphic dispatch that if the place of meeting of the commission was Washington and not London, "all will be right." This point having been conceded, Her Majesty's government had every reason to suppose that the convention was
[17] in other respects accepted by the cabinet of * Washington as it stood, with a fair hope that it would ultimately receive the sanction of the Senate of the United States.

Under these circumstances I think it right to place on record in a dispatch a full narrative of the communications which have passed between Mr. Johnson and myself on the question of the claims, and which led to the signature of the convention of the 10th of November, and of the separate article attached to it.

In a conversation which took place at the foreign office on the 25th of September, Mr. Johnson, after discussing with me the subject of naturalization, passed to that of the so-called Alabama claims. In this conversation, of which a memorandum is inclosed, extracted from my notes of the interview, Mr. Johnson first suggested, as a means of settlement, the payment of a lump sum of money, or a cession of territory by Great Britain, both of which plans I considered inadmissible, so long as the question of the liability of Great Britain was denied by us, and remained undecided. Mr. Johnson then spoke of the manner in which arbitration, if agreed upon, might be carried out, and made a suggestion that the questions in dispute with regard to these claims might be referred to the decision of a certain number of individuals, to be selected for their acquaintance with the principles at issue. He said that these persons need not be subjects of either of the two countries directly concerned. Without committing myself to any positive decision on this point, I said that although such a proceeding would be contrary to the usual practice in such cases, I did not at the moment see any objection to it so vital as to make it *ab initio* inadmissible, provided the other points of difference were satisfactorily arranged. This conversation, so far as it related to the Alabama claims, was understood to be of a confidential and unofficial character, Mr. Johnson having no authority to deal with that question till the question of naturalization had been disposed of. Nothing, therefore, passed which could be held to bind either party.

After signing the protocol on naturalization on the 9th of October, Mr. Johnson entered with me on the discussion of the San Juan question. During the progress of the negotiations he communicated, confidentially, an extract of his instructions, to the following effect: "Our conclusion is, that in the event that you become convinced that an arrangement of the naturalization question, which would be satisfactory to the United States in view of your previous instructions, can be made, then, and in that case, you may open concurrent negotiations upon the two questions first herein named, to wit, San Juan and the claims question; but that those two negotiations shall not be completed, or your proceedings therein be deemed obligatory, until after the naturalization question shall have been satisfactorily settled by treaty or by law of Parliament."

In consequence of this clause in his instructions, Mr. Johnson stipulated that the agreement on the San Juan arbitration should be embodied in a protocol instead of a treaty, and that a provision should be inserted making its operation dependent on the satisfactory settlement

of the naturalization question by treaty, or by law of Parliament, or by both. To which clause the words, "unless the two parties shall in the mean time otherwise agree," were added at my suggestion.

The protocol on the San Juan question having been signed on the 17th of October, Mr. Johnson called, by appointment, on the 20th of the same month to discuss with me the question of the claims. In this conversation, which is placed on record in my dispatch to you of the 21st, Mr. Johnson proposed that "all the claims on both sides should be referred to the decision of commissioners who should be, in equal numbers, British subjects and American citizens; who, if they disagreed, should have power to call in an umpire, and whose decision, with such assistance, should be final."

I objected to this plan, for reasons given at length in the dispatch, and said that for these reasons it seemed to me preferable that the arbitrator proposed should be the sovereign or president of a friendly state. I named especially the King of Prussia, as likely to be acceptable to both parties. Mr. Johnson said that he was not instructed to accede to the proposal I had made, but would telegraph for permission to do so.

Mr. Johnson called on the 29th of October to convey the answer of his Government, and a memorandum of his communication is inclosed.

From this statement it appears that Mr. Seward conceived that "there would be a prejudice on one side or the other against any arbitrator who might be named beforehand to decide on this specific question."

He proposed, therefore, that "each government should, in the
[18] first place, name commissioners, two on each side, to *adjudicate on all claims by the subjects or citizens of either country on the other, arising out of the late civil war in the United States." "The two governments, in addition, to agree on an arbitrator or arbitrators, to whose final decision shall be referred any question connected with such claims on which the commissioners shall be unable to come to an agreement among themselves." "In the event of this plan being adopted, it would appear expedient further to provide that neither government should make out a case in support of its position with regard to any class of claims, but that any question on which difficulties may arise between the commissioners should go from them to the arbitrator as it stands."

On the 3d of November Mr. Johnson again called on me at the foreign office, by appointment, for a conference, at which the attorney-general, at my instance and with Mr. Johnson's consent, was also invited to be present, and at this meeting a memorandum was drawn up, of which a copy is also inclosed, embodying the result arrived at, and to which Mr. Johnson was understood to assent on behalf of his Government.

It is on the bases laid down in this memorandum that the convention of the 10th of November is founded.

The memorandum was submitted by me to the lord chancellor and the prime minister, and upon their suggesting some verbal alterations for the sake of greater clearness, I sent a copy on the 4th of November, with the revisions marked, to Mr. Johnson, to ask whether he saw any objection to them.

Mr. Johnson replied the next day that he had no objection to the alterations, with one exception, in which he suggested the substitution of an English version for the Latin words "*pro hac vice*," which it was proposed to introduce. Mr. Johnson said that he did not see that these words affected the sense of the article at all, but that others might sup-

pose that they did, and he might be asked for an explanation, which would lead to delay. He added, "It is important, I think, that the convention be signed at the earliest moment, and I will thank your lordship to let me know when you can see me on the subject, as there are some matters of detail yet to be agreed upon."

I accepted at once the single modification proposed by Mr. Johnson in the memorandum, and a protocol was drawn up in the terms specified, and submitted to the law-officers of the Crown for their opinion. But as Mr. Johnson had used the word "convention" in his note of the 5th of November, I wrote to him to ask "whether he would be ready to sign an actual convention on the subject, or whether he would still prefer to adhere to the form of a protocol, similar to those in which the results of the former negotiations on the naturalization and San Juan questions had been recorded."

To this Mr. Johnson replied, on the same day, in the following terms: "I will sign a convention instead of a protocol on the matters now unsettled, as I consider that I am authorized to do so by the cable dispatch from Washington, which I showed you, taken in connection with my original instructions. But will you consider them equivalent to a formal full power? If you do, have an agreement drawn up in that form."

Upon the receipt of this note, a draught convention was drawn up, and I forwarded it to Mr. Johnson on the 7th of November, stating that I was ready to sign such a convention, to be signed by Mr. Johnson *sub spe rati*, in the absence of formal powers.

Mr. Johnson called on the 9th of November, and discussed the provisions of the convention at length, proposing various alterations. He particularly insisted on the necessity of the commission sitting at Washington and not at London; but on being shown the inconvenience of such an arrangement, and the delay which would arise in the reference of disputed points and production of further evidence as regards the "Alabama" claims, he finally waived the point.

The convention, with such alterations as had been adopted, was then drawn out and signed on the 10th of November.

On the 12th of November Mr. Johnson called at the foreign office, and, as I was then absent at Lynn, he wrote me a private note to the effect that he had "just received a telegraphic message from Mr. Seward, saying, claims convention entirely acceptable, except as to the place of meeting, and that it is essential to its approval by the Senate that the place be Washington and not London." After some delay, in consequence of my absence from town, a telegram was received from you in the same sense.

I then agreed to the alteration, though I still considered that it
[19] would be *productive of inconvenience, and an additional article to carry the change into effect was signed on the 23d of November.

Matters remained in this state until the receipt of your telegram of the 27th of November, up to which time I was under the impression, which was also shared in by Mr. Johnson, that the convention which had been signed, being in accordance with his instructions as construed by him, would meet with the approval of the United States Government.

I am, &c.,
(Signed) STANLEY.

[Inclosure 1 in No. 20.]

Memorandum of conversation between Lord Stanley and Mr. Reverdy Johnson, at the foreign office, September 25, 1868.

The first subject touched upon was that of naturalization. Lord Stanley explained the difficulties which lay in the way of the signature of the treaty, but threw out the idea of a protocol, to recognize, subject to the passing of an act of Parliament, the principle that subjects of either country, becoming naturalized in the other, should be released from their native allegiance. Mr. Johnson expressed himself quite favorable to such an arrangement, and seemed to think that it would be satisfactory.

As regards the San Juan boundary, Mr. Johnson said that he should be ready to agree, in the name of the United States Government, to arbitration as soon as the naturalization question was once disposed of.

The conversation then turned on the Alabama claims. Mr. Johnson adverted generally, though not in the form of distinct proposals, to various methods by which this question might by settled. His first suggestion was the payment of a lump sum of money. Lord Stanley at once declared this to be inadmissible so long as the question of our being liable at all was denied by us and undecided by any mode of reference. Mr. Johnson then talked of some cession of territory, an idea which Lord Stanley did not think more promising. Finally, in the supposition that arbitration was the only means to be resorted to, Mr. Johnson talked over the manner in which such arbitration could be arranged, and suggested that a certain number of individuals should be selected, distinguished for their acquaintance with the principles at issue, to whom the questions in dispute should be referred. It was understood that these persons should of course not belong to either of the two countries. Lord Stanley answered in general terms, and without distinctly committing himself either way, that such a proceeding would be contrary to the usual practice in such cases, but that he did not at the moment see any objection to it so vital as to make it, *ab initio*, inadmissible, provided the other points of difference were satisfactorily arranged.

It was understood on both sides that the conversation, so far as it related to the Alabama claims, was of a confidential and unofficial character, Mr. Johnson having no authority to deal with that question till naturalization was disposed of. Nothing therefore passed which could be held to bind either party.

[Inclosure 2 in No. 20.

Memorandum of conversation between Lord Stanley and Mr. Reverdy Johnson, October 29, 1868.

At the last interview which Mr. Johnson had had with Lord Stanley on the 20th instant, he had agreed to telegraph to his Government to ask whether they would consent to the question of the liability of Great Britain for the so-called Alabama claims being referred to the arbitration of the King of Prussia. He now called to communicate Mr. Seward's answer to that proposal.

Mr. Seward is of opinion that there would be a prejudice on one side or the other against any arbitrator who might be named beforehand to decide on this specific question, and suggests a plan by which he thinks this difficulty may be avoided.

[20] He proposes that the two governments should in the first place name *commissioners, two on each side, to adjudicate on all claims by the subjects or citizens of either country on the other, arising out of the late civil war in the United States. Each government to name its own commissioners.

The two governments, in addition, to agree on an arbitrator or arbitrators, to whose final decision shall be referred any question connected with such claims on which the commissioners shall be unable to come to an agreement among themselves.

It may be presumed as a matter of course that the commissioners will differ as to the admissibility of the Alabama and similar claims. The question will then be referred by them to the arbitrator, with whom the decision will thus virtually rest.

In the event of this plan being adopted it would appear expedient further to provide that neither government should make out a case in support of its position with regard to any class of claims, but that any question on which difference may arise between the commissioners should go from them to the arbitrator as it stands.

[Inclosure 3 in No. 20.]

Memorandum of the result of a conference between Lord Stanley, Mr. Reverdy Johnson, and the attorney-general, at the foreign office, November 3, 1868.

[The alterations in red ink show the manner in which the memorandum was revised at the meeting between Lord Stanley, the lord chancellor, and Mr. Disraeli, November 4, 1868. This copy was sent privately to Mr. Reverdy Johnson, to know if he concurred in those alterations, and returned by him with a suggestion, as marked, on paragraph 3.]

[NOTE BY THE PRINTER OF THE SECOND EDITION.—In this edition the "alterations in red ink" of the Geneva edition are indicated as follows: Insertions, by SMALL CAPITALS; erasures, by *italics*.]

It is proposed by Mr. Reverdy Johnson on behalf the Government of the United States:

1. That the two governments shall, in the first place, name commissioners, two on each side, to determine all claims by subjects or citizens of either country on the other, whether or not arising out of the late civil war in the United States, SUBJECT TO THE QUALIFICATION MENTIONED UNDER SECTION 3. *other than those hereinafter mentioned.*

2. The said commissioners to agree on an arbitrator to whose final decision shall be referred any claim [EXCEPT AS HEREINAFTER MENTIONED] upon which the commissioners differ.

3. The commissioners SHALL *to* have power to adjudicate upon the so-called Alabama and other similar claims; [BUT] before such *last-mentioned* claims are aken into consideration by THEM *the commissioners*, the respective governments SHALL *to* fix upon some sovereign or head of a friendly state, [AS AN ARBITRATOR *PRO HAC VICE**] to whom the whole of such questions shall be referred in the event of the commissioners disagreeing upon the same.

*Alteration proposed by Mr. Reverdy Johnson, and accepted by Lord Stanley, "as to such claims."

4. In the event of a decision on any of such last-mentioned claims being arrived at, involving a question of compensation to be paid, the amount of such compensation to be referred back to the commissioners for adjudication, and, in the event of their differing, then to the arbitrator appointed by them under the second section.

5. The awards of the commissioners in all cases to be unanimous. Otherwise the matter in dispute to go to the arbitrator.

6. In regard to the so-called Alabama claims, and others included under the same head, it is agreed that neither government shall make out a case in support of its position, but that the questions at issue, as set forth in the official correspondence between the two governments, shall be referred to the commissioners, and, in the event of their making no award, then to the arbitrator, without comment or the production of further evidence, unless such evidence or argument shall be called for by the commissioners or arbitrator, as the case may be.

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[21] *[Inclosure 4 in No. 20.]

Lord Stanley to Mr. Reverdy Johnson.

FOREIGN OFFICE, *November* 4, 1868.

DEAR MR. JOHNSON: I have been in consultation with some of my colleagues respecting the proposal for referring the British and American claims to arbitration, and some verbal alterations have been suggested in the memorandum drawn up at our conference yesterday.

I inclose a copy of the memorandum, with the revisions marked in red ink, and shall be obliged by your letting me know whether you see any objection to them. They are simply introduced for the sake of greater clearness.

Believe me, &c.,
(Signed) STANLEY.

[Inclosure 5 in No. 20.]

Mr. Reverdy Johnson to Lord Stanley.

LEGATION OF THE UNITED STATES,
London, December 5, 1868.

MY DEAR LORD STANLEY: I have just received your note of last evening, with its inclosure, and hasten to say that I have no objection to the alterations suggested in the latter. I would prefer, however, that the words *pro hâc vice* inserted in the third arti-

cle should be omitted. I do not see that they affect the sense of the article at all, but others may suppose that they do; and I may be asked for an explanation, which would lead to delay. I would suggest, therefore, that instead of those words we substitute "as to such claims." It is important, I think, that the convention be signed at the earliest moment; and I will thank your lordship to let me know when you can see me on the subject, as there are some matters of detail yet to be agreed upon.

With sincere regard, &c.,
(Signed) REVERDY JOHNSON.

[Inclosure 6 in No. 20.]

Lord Stanley to Mr. Reverdy Johnson.

FOREIGN OFFICE, *November* 6, 1868.

DEAR MR. JOHNSON: I shall be most happy to see you here on Monday at 12. I see no objection to the words *pro hâc vice* being omitted and "as to such claims" substituted.

Very truly, yours,
(Signed) STANLEY.

[Inclosure 7 in No. 20.]

Lord Stanley to Mr. Reverdy Johnson.

FOREIGN OFFICE, *November* 6, 1868.

DEAR MR. JOHNSON: In order to expedite matters, I am having the memorandum as to the settlement of the claims put into formal shape, so that any further addition which may be adopted at our next meeting may be inserted with the least possible delay.

For this purpose I should be glad to know whether you would be ready to sign an actual convention on the subject, or whether you would still prefer to adhere to the form of a protocol, similar to those in which the results of our former negotiations on the naturalization and San Juan questions have been recorded.

I make the inquiry, as you use the word "convention" in your note of yesterday.

Believe me, &c.,
(Signed) STANLEY.

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[22] *[Inclosure 8 in No. 20.]

Mr. Reverdy Johnson to Lord Stanley.

LEGATION OF THE UNITED STATES,
London, November 6, 1868.

MY DEAR LORD STANLEY: I will sign a convention instead of a protocol on the matters now unsettled, as I consider that I am authorized to do so by the cable dispatch from Washington, which I showed you, taken in connection with my original instructions. But will you consider these equivalent to a formal full power? If you do, have an agreement drawn up in that form.

I remain, &c.,
(Signed) REVERDY JOHNSON.

[Inclosure 9 in No. 20.]

Lord Stanley to Mr. Reverdy Johnson.

FOREIGN OFFICE, *November* 7, 1868.

DEAR MR. JOHNSON: I am ready to sign a convention with you on the claims question, to be signed by you, *sub spe rati*, in the absence of formal full powers.

I accordingly inclose a draught, founded on the terms of the memorandum, with such additions as are necessary to define the action of the commission, &c., these additions being principally taken from the convention concluded between the two governments in 1853 for the settlement of claims, of which instrument I also send you a copy.

Believe me, &c.,
(Signed) STANLEY.

[Inclosure 10 in No. 20.]

Mr. Reverdy Johnson to Lord Stanley.

4 UPPER PORTLAND PLACE,
November 12, 1868.

MY DEAR LORD STANLEY: I have just received a telegraphic dispatch from Mr. Seward, saying claims convention entirely acceptable, except as to the place of meeting; and that it is essential to its approval by the Senate that the place be Washington, and not London. I think the change will be disadvantageous to the Alabama claimants; but if he is right, that it is necessary to the final ratification, I hope you will not object to it.

Let me know, by telegram or mail, at your earliest convenience. If by telegram, say, "Have no objection."

Yours truly,
(Signed) REVERDY JOHNSON.

No. 21.

Mr. Thornton to Lord Stanley.

[Extract.]

WASHINGTON, *November* 30, 1868. (Received December 12.)

Mr. Seward received, on the 24th instant, the convention upon claims signed by your lordship and Mr. Reverdy Johnson on the 10th instant. It was taken into consideration on the same day at the meeting of the cabinet, and rumors were current soon after that the Government were sorely disappointed at its contents, which were pronounced to be unsatisfactory.

I had the honor to receive the copy sent me by your lordship on the following day, the 25th instant.

On the 26th Mr. Seward called upon me, and informed me that the contents of the convention were not in accordance with the instructions which had been given to Mr. Reverdy Johnson; that the President and his colleagues could not approve of certain of the stipulations comprised therein; and that they were unanimously of opinion that, in its
[23] present form, the convention would not receive *the sanction of the Senate. Upon the latter point I could not but concur. Mr. Seward confessed that it was possible that some excuse might be made for Mr. Johnson's not having kept more closely to his instructions, because, as some of these were given by telegrams in answer to Mr. Johnson's questions sent by the same channel, Mr. Seward may have misunderstood the former, and Mr. Johnson may not have fully comprehended the instructions sent in reply.

But, wherever the fault lay, Mr. Seward proceeded to assure me that his Government earnestly desired that a good work, which had been brought so nearly to a satisfactory conclusion, should not at the last moment fail; and that, consequently, although they acknowledged that your lordship would be justified in declining to re-open negotiations, they hoped that, in consideration of the importance of the subject, you would not do so, but would consent to some modifications of the convention which would render it acceptable to the Senate. At the same time, he expressed his sense, and that of his colleagues, of the difficulty which would be encountered of explaining by correspondence why the convention in its present shape is objectionable, and that they had considered the expediency of sending some one to England for the purpose of doing this verbally. It was at first proposed that either Mr.

Evarts, now attorney-general, who during the war was well known in England, or Mr. Seward himself, should undertake this mission; but upon examination it was found that, besides other reasons which rendered this step unadvisable, the President had not the power to allow either of these gentlemen to intrust to any one else, even for a short time, the duties of their offices. It was therefore proposed, and the President commissioned Mr. Seward to ask me whether I would consent to go to England for the purpose of laying the circumstances of the case before your lordship. I at once replied that I could not do so without your lordship's leave, but would consider whether I should ask for it by telegram. At the same time I pointed out to him that so sudden a visit to England might give rise to suppositions and rumors in this country which might be prejudicial to the end we both had in view. It was agreed that I should again see Mr. Seward on the next day, when he would explain to me more fully the objections which were made to the convention in its present form. But before he left me I pointed out to him that unless the convention were finally accepted by the United States, the latter would be in a bad position in the eyes of the world if, after Her Majesty's government had consented to all that was asked by the representative of the United States, the Government and Senate of the latter should refuse to confirm what he had signed, and that I therefore hoped a conciliatory spirit would be shown in the fresh instructions now about to be given. Mr. Seward did not deny the truth of my observation, but replied that such a feeling would pass off, and the conviction would remain that the United States were determined to keep the question open — a state of things which, with regard to future eventualities, might be more injurious to England than to this country. He assured me, however, in the most earnest manner, that he was convinced that the Senate would sanction the convention if it were modified in the manner which he should now propose.

Upon reflection I determined to send to your lordship my telegram of the 27th instant.[1]

On the following day I had an interview with Mr. Seward, during which he read me the draught of a dispatch which he intended to send to Mr. Reverdy Johnson; and, after the receipt of your lordship's telegram of the 28th instant, I paid him another visit. I understand that a telegram was sent to Mr. Johnson on the evening of the 27th instant, and that the dispatch, of which the draught had been read to me, left New York on the 28th instant. These two contained the modifications proposed by Mr. Seward, and which I proceed to detail more fully than was possible in the telegram which I had the honor of forwarding to your lordship to-day.[2]

Mr. Seward has pointed out to Mr. Reverdy Johnson that he had always intended, and had so instructed him, that a protocol, not a convention, should be signed with regard to the Alabama and war claims, in the same manner, and with the same condition, as that upon the San Juan question. I have certainly always understood this to be the case, and I believe that my correspondence with your lordship has given indications of this conviction on my part. Mr. Seward explains that he had proposed this step, not from any want of confidence that a bill would be submitted by Her Majesty's government to Parliament
[24] for modifying *the existing laws of allegiance, but because he preferred that the Senate should be conciliated by the stipulations being submitted to them in the form of a protocol, which would be as it were a mode of asking their advice whether a convention might

[1] See No. 18. [2] See No. 19.

be signed in the same terms, their sanction of which would thus be insured. I now gather, however, from Mr. Seward's dispatch that he has authorized Mr. Johnson, should your lordship wish it, and should you consent to the proposed modifications, to sign conventions on all the three questions — naturalization, San Juan, and claims — or on any two of them.

The first change asked by Mr. Seward is that in line 20 of the 1st article should be inserted after the word "States" the words, "by and with the advice and consent of the Senate." Your lordship will easily understand that this is not a *sine quâ non*, but is proposed as a mark of deference to the Senate on the part of the President, and as the more expedient on account of the recent conflict between the Congress and the President, and, therefore, more likely to disarm opposition. It is a change to which I imagine Her Majesty's government would have no objection.

To the change of the place of meeting of the commission from London to Washington your lordship has already signified your willingness to assent.

The proposal to cancel in line 44 from the word "save" to the word "convention," and the last paragraph of Article II, is a consequence of Mr. Seward's petition that the whole of Article IV should also be canceled. The United States Government declare that the second period of this article contains an unjust discrimination against the Alabama claims as compared with other American and the British claims.

Mr. Seward asserts that he instructed Mr. Johnson to endeavor to conclude a protocol with your lordship as similar as possible to the convention of 1853, and that he never contemplated such a deviation from the stipulations contained in the latter as would render the new arrangement unfair towards the Alabama claimants. The United States Government consider Article IV unfair, because it stipulates that only one umpire shall be named; that he shall be chosen by the high contracting parties and not by the commissioners; and that he must be a sovereign or head of a state; whereas with regard to the other American and the British claims, the commissioners are to choose the umpire or umpires, who may be any person or persons they may select, without respect to class.

Whilst upon this point, I should observe that I gathered from Mr. Seward that his Government would not object to a sovereign or head of a state being named by the commissioners as umpire or umpires, and that they would even consent to give their commissioners instructions to that effect, but that the Senate would not probably sanction its being mentioned in the protocol, because it would be different from the convention of 1853. I even believe that if the commission were actually installed here, before the present administration should leave office, the President might be induced to instruct the United States commissioners to consent to the choice of the King of Prussia as umpire, should he be proposed by the English commissioners.

The United States Government likewise object to the unanimous decision required by Article IV for Alabama claims, whereas the other claims may be decided by a majority of the commissioners. This they consider unjust, and are even more sensitive about it than upon the subject of the umpire. They would, however, have no objection to the first sentence of Article IV as far as the semicolon, if your lordship should wish that it should remain, although no instructions had been previously given to Mr. Johnson to make any positive declaration with regard to the Alabama claims, so as to distinguish them from the others.

If Article IV were canceled, Article V would naturally have the same fate.

The United States Government strongly object to Article VI, because it does not allow either government to make out a case in support of its position, nor any person to be heard for or against the Alabama claims; whereas both these steps are allowed with regard to other claims, and they do not see why a prejudicial distinction should be stipulated in the convention against the Alabama claims, which would render the sanction of the Senate more doubtful, although they acknowledge that little could be added to what is contained in the official correspondence. They also object, for the reasons already mentioned, to the decision being necessarily unanimous, both with regard to the claims themselves, or to the calling for argument or further evidence. They therefore ask that Article VI may be canceled, or that it may be substituted by the following words:

[25] *In case of every claim, the official correspondence which has already taken place between the two governments respecting the question at issue shall be laid before the commissioners, and in the event of their not coming to a decision thereupon, then before the arbitrator; either government may also submit further evidence and further argument thereupon, written or verbal.

Mr. Seward further proposes that in Article IX, eighteen months may be substituted for twelve months, because circumstances may arise which may delay the assignment of the necessary sums for the payment of the claims by the House of Representatives, as happened lately with regard to the payment to Russia for the Alaska territory.

Finally, Mr. Seward asks for a change of the second paragraph of Article XI, which is merely consequent upon the change of the place of meeting of the commission from London to Washington.

Should your lordship be able to agree to these modifications, Mr. Seward has repeatedly assured me that the Senate are committed to the acceptance of the convention so modified, and that he is convinced they will sanction it.

No. 22.

Mr. Seward to Mr. Reverdy Johnson. (*Communicated to the Earl of Clarendon by Mr. Reverdy Johnson, December 22.*)

DEPARTMENT OF STATE,
Washington, November 27, 1868.

SIR: I have received your dispatch of the 10th of November, which is accompanied by a convention which you signed with Lord Stanley, at London, on the 10th instant, for the settlement of all outstanding claims. Your dispatch gives your reasons for assenting to the convention, and especially to some of its provisions.

Having submitted these papers to the President, I am now to give you his directions concerning the matters thereby presented. In order to do this with greater perspicuity, I shall take notice of the several articles contained in the convention in their proper order.

Article I provides for the appointment of four commissioners for the adjustment of mutual claims; two to be named by Her Britannic Majesty, and two by the President of the United States. In the event of any commissioner omitting or ceasing to act, Her Britannic Majesty, or the President of the United States, as the case may be, shall name

another person to act as commissioner instead of the commissioner originally named. Article I further provides that the commissioners shall meet at London, and make and subscribe a solemn declaration therein prescribed. This declaration shall be entered of record. The article further provides that the commissioners shall then, and before proceeding to any other business, name some person to act as arbitrator or umpire, to whose final decision, save as otherwise provided in Article IV, shall be referred any claim upon which they may not be able to come to a decision.

If they should not be able to agree upon an arbitrator or umpire, the commissioners on either side shall name a person as arbitrator or umpire, and in each and every case in which the commissioners may not be able to come to a decision, the commissioners shall determine by lot which of the two persons so named shall be arbitrator or umpire in that particular case. The person or persons so to be chosen as arbitrator or umpire shall make and subscribe the same solemn declaration which is prescribed to the commissioners, and it is to be entered of record. In the event of the death, absence, incapacity, or failure of such arbitrator or umpire, another shall be named to act as arbitrator or umpire in the same manner as the person originally named.

In regard to this article—

1st. I remark that we must require that it may be amended so as to provide that the commissioners to be named on the part of the United States shall be named by the President, by and with the advice and consent of the Senate of the United States. It is not doubted that this ought to be, as it probably would be, taken to be the meaning of the convention as it now stands. Nevertheless, with the view to avoid possible misapprehension, it is desirable that the article should be amended so as to make the provision literally conform in this respect to the Constitution of the United States. Of course Her Majesty's government can have no objection to this amendment.

[26] *2dly. We are advised that, in accordance with my suggestions heretofore made by cable telegram, Her Majesty's government have consented to amend the first article so as to substitute Washington instead of London for the place of the meeting of the commissioners. This amendment will be expected to be finally made.

3dly. We must insist upon amending this first article by striking out the words "save as otherwise provided in Article IV of this convention." Our reasons for this amendment will fully appear in my commentary upon Articles IV, V, and VI. Your are authorized to say that, with these amendments, Article I would be satisfactory to the President of the United States.

I proceed to Article II.

Article II prescribes certain forms and rules for the proceedings of the commissioners, and provides that each government may name one person to attend the commissioners as agent upon its behalf, to present and support claims on its behalf, to answer claims made upon it, and to represent it generally. Article II closes with the following paragraph: "The provisions of this article shall, however, be subject to the special arrangements made by Articles IV, V, and VI of this convention, respecting the claims which form the subject of these articles, which shall be dealt with as directed in those articles."

The United States must insist on striking out this last paragraph of Article II, for the reasons which appear in the remarks hereinafter made on Articles IV, V, and VI. You are authorized to say that, with this exception, Article II would be satisfactory to the President.

I pass to Article III.

Article III fixes the periods within which claims shall be submitted, examined, and decided. This article is unobjectionable, and is entirely approved.

I have thus come to Article IV.

Article IV specially declares that the commissioners shall have power to adjudicate upon the class of claims referred to in the official correspondence between the two governments as the Alabama claims, but declares that before any such claims are to be taken into consideration by them, the two high contracting parties shall fix upon some sovereign or head of a friendly state as an arbitrator in respect of such claims, to whom such class of claims shall be referred in case the commissioners shall be unable to come to a unanimous decision upon the same.

The United States are obliged to disallow this Article IV. The United States have no objection to the first clause of the article, which declares that the commissioners shall have power to adjudicate upon the so-called Alabama claims. Indeed, the United States would willingly retain this clause, because of its explicitness in regard to the Alabama claims. They did not, in their instructions to you, insist upon such a special direction in regard to the Alabama claims, but only because they thought that special mention of those claims might be deemed inconvenient on the part of Her Majesty's government; while it could not admit of doubt that these so-called Alabama claims were plainly included, as well as all other claims of citizens of the United States, in the comprehensive description of claims contained in Article I.

Secondly, it is to be considered by Her Majesty's government that the Alabama class of claims constitute the largest and most material portion of the entire mass of claims of citizens of the United States against Great Britain, which it is the object of the convention to adjust. Upon the Alabama claims, as well as all others, this Government is content to obtain, and most earnestly desires, a perfectly fair, equal, and impartial judicial trial and decision. This Government has always explicitly stated that it asks no discrimination in favor of the Alabama claims, and can admit of no material discrimination against them in the forms of trial or judgment, but must, on the contrary, have them placed on the same basis as all other claims. This Article IV, so far from placing them on an equal footing with the other United States claims, and with the British claims, prejudicially discriminates against them in these respects:

1. While the convention provides that the other United States claims and the British claims shall be settled and determined by a majority of the commissioners, this Article IV requires entire unanimity of the commissioners for a decision upon any of the Alabama claims.

2. This Article IV further discriminates against the Alabama claims in this, that while the choice of an arbitrator or umpire in regard
[27] to all other than *the Alabama claims is left to be decided by lot in case of disagreement of the commissioners, this Article IV provides that, in regard to the Alabama claims, the two governments shall definitely agree in the appointment of an arbitrator or umpire.

3. This Article IV again discriminates against the Alabama claims in requiring, that in regard to those claims the arbitrator or umpire shall be some sovereign or head of a friendly state, while no such limitation is made in regard to any other class of claims.

The present negotiation was undertaken in the hope that the controversy about international claims, which has so long existed, and has been attended with so much national feeling on both sides, might be

amicably settled and closed by adopting the very simple yet comprehensive principles and forms of reference and adjudication which were adopted with so much success under circumstances not very dissimilar, by the convention for the adjustment of international claims of February 8, 1853. That convention was proposed by the United States as a model which had already received the approval of both parties, and had the prestige of complete and even felicitous success. That convention of 1853 had no reservations and no preference of, for, against, or concerning claims of any class of citizens or subjects of either nation. A judicial tribunal was constituted by it in a manner perfectly equal, just, and fair; and to that tribunal was confided the duty of hearing all claims of whatever separate classes, in only one and exactly the same manner, and deciding upon them in only one and exactly the same manner. It probably would conduce to no good end to set forth on this occasion the reasons why the Alabama claims, more than any other class of international claims existing between the two countries, are the very claims against which the United States cannot agree to, or admit of any prejudicial discrimination. To present those reasons now would be simply to restate arguments which have been continually presented by this Department in all the former stages of this controversy, while it is fair to admit that those reasons have been controverted with equal perseverance by Her Majesty's department for foreign affairs.

It is not to be understood by these remarks that the United States except against the possible designation of a sovereign or head of a friendly state as arbitrator or umpire in regard to the Alabama claims. On the contrary, the United States would not be unwilling to have so distinguished an arbitrator or umpire agreed upon by the commissioners in any and, indeed, every case that shall come before them. All that is insisted upon is that the arbitrament of a sovereign or head of a nation shall not be made unnecessary in regard to other United States claims and British claims, and yet be made indispensable to the adjustment of the Alabama claims.

Article V provides that in the event of a decision on any of the claims mentioned in the next preceding article, (Article IV,) being arrived at by the arbitrator, involving a question of compensation to be paid, then the amount of such compensation shall be referred back to the commissioners for adjudication; and in the event of their not being able to come to a decision, it shall then be decided by the arbitrator appointed by them, or who shall have been determined by lot, according to Article I.

I remark upon this Article V, that no objection will be made to it if it shall be so amended as to adapt it to the general structure of the convention after Article IV shall have been stricken out.

Article VI provides that with regard to the Alabama class of claims neither government shall make out a case in support of its position, nor shall any person be heard for or against any such claim. The official correspondence which has already taken place between the two governments respecting the questions at issue shall alone be laid before the commissioners; and in the event of their not coming to a unanimous decision, as provided in Article IV, then before the arbitrator without argument, written or verbal, and without the production of any further evidence. But the commissioners, unanimously, or the arbitrator shall, however, be at liberty to call for argument or further evidence, if they shall deem it necessary.

The United States are obliged to disallow this article in its present form, upon the principle set forth in my remarks upon Article IV, and

for the reasons there given. The article is believed to be superfluous, while the precautions it contains against allowing as full a hearing and examination of the Alabama claims as is allowed to all other American claims, and to British claims, would have the *mischievous [28] effect of exciting unnecessary distrust in the Senate, and among the people of the United States, and it is presumed even among the people of Great Britain. The President confidently hopes that upon reconsideration of the subject Her Majesty's government will consent to amend the convention by striking out Article VI, or at least by amending it, so that Article VI will read as follows: "In case of every claim, the official correspondence which has already taken place between the two governments respecting the questions at issue shall be laid before the commissioners; and, in the event of their not coming to a decision thereupon, then before the arbitrator; either government may also, in either case, submit further evidence and further argument thereupon, written or verbal."

Article VII provides that the decision of the commissioners, or of the arbitrator or umpire, as the case may be, shall be considered by both parties as absolutely final and conclusive, and full effect shall be given to such decisions without any objection or delay whatever.

This Article VII is approved.

Article VIII provides that no claim arising out of any transaction prior to the 26th of July, 1853, the day of the exchange of the ratification of the convention of the 8th of February, 1853, shall be admissible under the convention.

This Article VIII is approved.

Article IX provides that all sums of money which may be awarded by the commissioners, or by the arbitrator or umpire, on account of any claim, shall be paid in coin or its equivalent, by the one government to the other, as the case may be, within twelve months after the date of the decision, without interest.

In view, however, of possible delays of legislative appropriation in the two countries, the word "twelve" ought to be struck out, and the word "eighteen" inserted. Article IX, if so amended, would be accepted.

Article X provides that the high contracting parties engage to consider the result of the proceedings of the commission as a full and final settlement of every claim upon either government, arising out of any transaction of a date prior to the exchange of the ratifications of the present convention, and further engage that every such claim, whether it shall have been presented to the notice of, made, preferred, or laid before the commission, shall, from and after the conclusion of the proceedings of the convention, be considered and treated as finally settled and barred.

This Article X seems unobjectionable, and is approved.

Article XI provides that the commissioners shall keep an accurate record, and correct minutes or notes, of all their proceedings, with the dates thereof, and shall appoint and employ clerks or other persons to assist them in the transaction of the business which may come before them; that the secretary shall be appointed by the principal secretary of state for foreign affairs of Her Britannic Majesty, and by the representative of the United States in London, jointly; that each government shall pay the salaries of its own commissioners; and all other expenses, and the contingent expenses of the commission, including the salary of the secretary, shall be defrayed in moieties by the two parties.

I suggest that this Article XI shall be amended, first, by inserting after the word "commissioners" in the first line, the words "and arbi-

trator or umpire;" and second, by striking out the second paragraph entirely, and substituting for it the words following: "The secretary shall be appointed by the representative of Her Britannic Majesty in Washington, and by the Secretary of State of the United States, jointly." With these amendments, this Article XI will be satisfactory.

Article XII fixes a period within which the ratification of the convention shall be exchanged.

The article is unobjectionable, and is approved.

I close this dispatch, as you might reasonably expect, with some remarks and directions upon the general subject of the negotiation.

It is sincerely hoped that the amendments I have proposed may be allowed by Her Majesty's government. It is conceived that these amendments do not, in fact, change the character of the convention, and that they do not secure to one party or deprive the other of any material advantage which the convention allows in its present shape. All that they can accomplish is to relieve the convention of any apparent spirit and tendency to prejudice the largest class of United States claims before the commission and the arbitrator.

In assigning my reasons for requiring the amendments, I have confined myself within the narrowest possible limits, seeking to avoid
[29] all unnecessary argument or *controversy. You are authorized, however, to say I am of opinion that the amendments proposed are important to recommend the convention to acceptance by the Senate and approval by the Congress of the United States.

The terms in which you have expressed yourself in your correspondence concerning the convention, leave no room to doubt that you have supposed that it would be satisfactory to the United States in its present shape. It is further believed that you may have expressed that opinion to Lord Stanley. Her Majesty's government, disappointed in the expectation thus excited, may possibly be reluctant to continue the negotiation. In that case you are authorized to say that the transaction was conducted on the part of this Government by a large use of the cable telegraph; that you were expected by this Government to adhere more closely than you have done to the convention of 1853 as a model, and were supposed to be so adhering while my telegraphic instructions written under that misconception were liable to be misunderstood by you as approving the departures you have made from that prescribed model. To this statement you will add the expression of regret on the part of this Government that this misunderstanding, which now seems to have been unavoidable, should have been the means of leading Her Majesty's government to suppose that Articles IV, V, and VI might be expected to obtain the constitutional assent of the Government of the United States.

If, on receiving this instruction, you shall be able to bring the negotiation to a satisfactory conclusion, it will be better to have that conclusion expressed in the form of a protocol rather than of a convention. That form would be preferable over the form of a convention in view of the discussions which any settlement of the subject might be expected to undergo in the Senate and among the people of the United States. It is not intended, however, by this remark to indicate any distrust of the acceptance of the convention when amended as herein proposed. On the contrary, there is good reason to believe that such a settlement would be as promptly approved as its influence upon the relations of the two countries would be immediately felt and appreciated.

It remains only to say that in view of the present situation of the claims convention, it is expedient to let the satisfactory settlement of

the naturalization question and the San Juan question rest in protocol. On the other hand, should Her Majesty's government accept the amendment of the claims convention herein proposed, you are authorized in that case to reduce the three or either two of these agreements to the forms of distinct conventions, and to sign and transmit them at once to this Department to be laid before the President for ratification.

To facilitate your understanding of this dispatch I give you herewith a copy of the convention as it would stand when amended as is herein proposed.

I am, &c.,
(Signed) WILLIAM H. SEWARD.

No. 23.

Memorandum communicated by Mr. Reverdy Johnson, December 24, 1868.

Article I, paragraph first, amend, by and with advice and consent of the Senate.

Paragraph second. Instead of "London," "Washington."

Article I, for paragraph, "The commissioners shall then, and before proceeding to any other business, name some person to act as an arbitrator or umpire, to whose final decision shall be referred any claim upon which they may not be able to come to a decision." In the case of any and every claim the arbitrator or umpire may be the head of a friendly foreign state or nation. In naming or agreeing upon an arbitrator or umpire the commissioners on each side may refer themselves to their own governments for instructions, and the contracting parties shall and will in such case, within six months after notice of such reference shall have been given, decide upon such arbitrator or umpire, and instruct their commissioners accordingly. If it shall happen, nevertheless, that at the expiration of the period of six months before named no person, the head of a sovereign state or otherwise, has been agreed upon as arbitrator or umpire, then, and in that case, the commissioners on each side shall name a person, the head of a sovereign state or otherwise, as arbitrator or umpire, and in each and every case, if all the commissioners shall not be able to come to a decision, they shall de-
[30] termine by lot which of any two persons *so named shall be the arbitrator or umpire in that particular case; the person first so "drawn" by lot being regarded as the choice of the commissioners. The person or persons so to be chosen as arbitrator or umpire, if not the head of a sovereign state or nation, shall, before proceeding to act as such in any case, make and subscribe a solemn declaration in a form similar to that made and subscribed by the commissioners, which shall be entered on the record of their proceedings. In the event of the death, absence, or incapacity of such person or persons, or of (all) or their omitting or declining, or ceasing to act as such arbitrator or umpire, another person shall be named in the same manner as the person originally named to act as arbitrator or umpire in his place and stead, and shall make and subscribe such declaration as aforesaid.

Article II, omit last paragraph.

Strike out Articles IV, V, and VI.

Article IX, eighteen months instead of twelve.

Article XI, amend as before proposed.

No. 24.

The Earl of Clarendon to Mr. Thornton.

FOREIGN OFFICE, *December* 24, 1868.

SIR: Her Majesty's government, since their accession to office, have had before them your telegrams of the 27th and 30th of November, your dispatch of the 30th of November, and your final telegram of the 21st of December, respecting the convention for the settlement of outstanding claims, signed by my predecessor and Mr. Johnson on the 10th of November. Mr. Johnson has also placed in my hands a telegram which he received on the same day, and which, with the exception of a passage in which it is said, "in the case of any and every claim the arbitrator or umpire may be the head of a friendly foreign state or nation," is identical with yours of the 21st instant.

It is, therefore, with this last telegram that Her Majesty's government are especially called upon to deal; but, before adverting to it, I must observe that Her Majesty's government understand that Mr. Seward's objection to the convention signed by my predecessor and Mr. Johnson turns chiefly on the distinction made in that convention between general claims and the so-called Alabama claims.

Mr. Seward desires to expunge from the convention the passages that relate to those claims, and to leave them to be dealt with on the same footing as other claims. The passages thus proposed to be expunged are the last paragraph of Article II and Articles IV, V, and VI of the convention.

Mr. Seward, anticipating a difficulty that might be raised by Her Majesty's government to submitting to the arbitration of any private individual, who might be selected as arbitrator or umpire by the commissioners, questions of principle such as would arise in the consideration of the Alabama claims, now proposes to insert in Article I of the convention passages which should admit generally of reference to a foreign sovereign or state of any such questions arising out of any claims whatever. By such a process provision would be made, though in a more comprehensive form, for the reference of the Alabama claims, in case of need, to the arbitration of a foreign sovereign or state, which was contemplated in Articles IV and VI of the signed convention.

Mr. Seward further desires that the convention should be made to resemble as closely as possible the convention of 1853, as being more likely in that shape to be acceptable to the Senate of the United States.

Her Majesty's government, after full consideration of the matter, and being no less desirous than their predecessors and Mr. Seward himself to come to a settlement on the difficult and complicated question of mutual claims, are prepared to meet the wishes of the Government of the United States in the manner which I will now explain to you.

They agree with Mr. Seward that it is desirable to adopt as closely as possible the terms of the convention of 1853.

They also agree to expunge the last paragraph of Article II, and also Articles IV and VI of the signed convention, which relate specifically to the Alabama claims; but they think that with a slight alteration, to be presently *explained, it would be desirable to retain the terms of Article V, though not embodied in a distinct article.

[31]

They further agree in the principle involved in Mr. Seward's proposed insertion in Article I, under which reference to the decision of a friendly sovereign or state would be admissible in certain cases.

It appears, however, to Her Majesty's government that, beside in-

volving a very wide departure from the terms of the same article in the convention of 1853, the proposed insertion would render the article obscure and complicated, difficult of construction, and still more difficult in operation, and would tend to protract almost indefinitely the labors of the commission.

Her Majesty's government fully concur in the necessity of providing in the convention for a more solemn arbitration where questions of principle, in which the commissioners cannot agree, are involved, than could be expected from any private individuals selected by the commissioners. Such questions may arise, not only in regard to the Alabama claims, but in regard to many other classes of claims which may be brought before the commissioners; and it seems to Her Majesty's government highly important that such questions should be decided by the arbitration of a foreign sovereign or state, inasmuch as they will turn on points of international law, comity, or equity, in the consideration of which a foreign sovereign or head of a state may call to his assistance the learning and intelligence of any of their subjects who have made such matters their special study.

But it seems to Her Majesty's government that it would scarcely be courteous to any sovereign or head of a friendly foreign state, in default of the two governments agreeing within six months as to whom reference should be made, to leave to the commissioners to select him. Such selection could only rightly be made by the two governments themselves, as being co-ordinate in rank and dignity, and therefore fitting applicants for the good offices of one of their compeers; while, on the other hand, for the reasons that I have stated, the questions on which the commissioners may be at issue can only be satisfactorily determined by a friendly foreign sovereign or state.

Her Majesty's government do not anticipate that any difficulty need arise between the two governments in selecting an arbiter of that class. No such difficulty was felt in the corresponding case of the convention of 1827, respecting the northwest boundary, when the King of the Netherlands was agreed upon by the British secretary of state and the United States minister in London.

Her Majesty's government observe, moreover, that in Mr. Seward's proposed insertion no allusion is made to the production before the commissioners or arbitrator of the official correspondence which may have taken place between the two governments respecting any claims. This they conclude to be an oversight; but if not, Her Majesty's government would not be disposed to insist upon it.

They observe, further, that no provision is made for accepting the decision of the arbitrator, whether chosen by the commissioners or chosen by the governments, as ruling not only the specific claim submitted to him, but all other claims of the same class. Her Majesty's government think it very essential that some such provision should be made, as otherwise the same principle may be submitted to arbitration over and over again, and so the sittings of the commissioners might be indefinitely prolonged.

Bearing all these considerations in mind, Her Majesty's government have framed a fresh draught of convention, which I now inclose, and which I have to instruct you to submit to Mr. Seward together with a copy of this dispatch. This draught has been framed on the principle of adhering as closely as possible to the terms of the convention of 1853.

Thus, the first article, with the exception of the introduction of the words "by and with the advice and consent of the Senate," and the

substitution of "Washington" for "London," nearly textually reproduces the same article of the treaty of 1853.

The second article has necessarily been altered to meet the special requirements of the present case. The proposed alterations, up to the end of the third paragraph, are printed in *italics* so that they may be more easily distinguished. The reasons for proposing them are already explained.

After the third paragraph, a paragraph has been introduced varying but slightly from the fifth article of the signed convention. It seems necessary to adopt this provision to meet the case of the principle of a claim being decided by an arbitrator, leaving to the commission-
[32] ers and the general arbiter named by them, *to determine, if the case arises, the amount of compensation payable to the claimant.

After the before-mentioned paragraph, is inserted the penultimate paragraph of the signed convention, as well as articles seven and eight of the same.

Drawn in this shape, article two will, except as regard the passages inserted in *italics* and the fourth paragraph, nearly textually reproduce the corresponding article of the convention of 1853.

The remaining slight alterations in articles nine and eleven of the signed convention are adopted.

It remains for me to say that Her Majesty's government prefer the form of convention to that of protocol, as calculated to lead to an earlier settlement of the preliminary discussions between the two governments. If a protocol were adopted in the first instance, its provisions would not be operative until it were embodied in a convention, and the arrangement would require, as Her Majesty's government understand the matter, to be twice submitted to the Senate for assent, whereby much time would be lost, with all the inconvenience of keeping open a question which necessarily attracts much attention, and of deferring the adjudication on claims in the early settlement of which so many subjects and citizens of the two countries are deeply interested.

I have only to add that, if the inclosed draught is accepted by Mr. Seward, Mr. Johnson might be authorized by telegraph to sign it, in which case it might be returned to Washington so as to admit of its being laid before the Senate by the middle of January, and pronounced upon by that body before the rising of the Congress on the 4th of March.

Her Majesty's government will greatly rejoice if their first interchange of communications with the Government of the United States should be attended with a settlement of the complicated matters which form the subject of my present dispatch.

I am, &c.,
(Signed) CLARENDON.

[Inclosure in No. 24.]

Draught of convention between Great Britain and the United States of America for the settlement of all outstanding claims.

Whereas claims have at various times since the exchange of the ratifications of the convention between Great Britain and the United States of America, signed at London on the 8th of February, 1853, been made upon the government of Her Britannic Majesty on the part of the citizens of the United States, and upon the Government of the United States on the part of subjects of Her Britannic Majesty: and whereas some of such claims are still pending, and remain unsettled; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America, being of opinion that a speedy and equitable settlement of all such claims will contribute much to the maintenance of the friendly feelings which subsist between

the two countries, have resolved to make arrangements for that purpose by means of a convention, and have named as their plenipotentiaries to confer and agree thereupon, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the right honorable George William Frederick, earl of Clarendon, Baron Hyde of Hindon, a peer of the United Kingdom, a member of Her Britannic Majesty's most honorable privy council, knight of the most noble order of the garter, knight grand cross of the most honorable order of the Bath, Her Britannic Majesty's principal secretary of state for foreign affairs;

And the President of the United States of America, Reverdy Johnson, esquire, envoy extraordinary and minister plenipotentiary from the United States to Her Britannic Majesty;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed as follows:

Article I.

The high contracting parties agree that all claims on the part of subjects of Her Britannic Majesty upon the Government of the United States, and all claims on the part
[33] of citizens of the United States upon the government of Her Britannic *Majesty, which may have been presented to either government for its interposition with the other since the 26th of July, 1853, the day of the exchange of the ratifications of the convention concluded between Great Britain and the United States of America, at London, on the 8th of February, 1853, and which yet remain unsettled; as well as any other such claims which may be presented within the time specified in article three of this convention, whether or not arising out of the late civil war in the United States, shall be referred to four commissioners, to be appointed in the following manner, that is to say: two commissioners shall be named by Her Britannic Majesty, and two by the President of the United States, *by and with the advice and consent of the Senate*. In case of the death, absence, or incapacity of any commissioner, or in the event of any commissioner omitting or ceasing to act as such, Her Britannic Majesty, or the President of the United States, as the case may be, shall forthwith name another person to act as commissioner in the place or stead of the commissioner originally named.

The commissioners so named shall meet at *Washington* at the earliest convenient period after they shall have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, without fear, favor, or affection, to their own country, upon all such claims as shall be laid before them on the part of the governments of Her Britannic Majesty and of the United States, respectively, and such declaration shall be entered on the record of their proceedings.

The commissioners shall then, and before proceeding to any other business, name some person to act as an arbitrator or umpire, to whose final decision shall be referred any claim upon which they may not be able to come to a decision. If they should not be able to agree upon an arbitrator or umpire, the commissioners on either side shall name a person as arbitrator or umpire; and in each and every case in which the commissioners may not be able to come to a decision, the commissioners shall determine by lot which of the two persons so named shall be the arbitrator or umpire in that particular case. The person or persons so to be chosen as arbitrator or umpire shall, before proceeding to act as such in any case, make and subscribe a solemn declaration, in a form similar to that made and subscribed by the commissioners, which shall be entered on the record of their proceedings. In the event of the death, absence, or incapacity of such person or persons, or of his or their omitting, or declining, or ceasing to act as such arbitrator or umpire, another person shall be named, in the same manner as the person originally named, to act as arbitrator or umpire in his place and stead, and shall make and subscribe such declaration as aforesaid.

Article II.

The commissioners shall then forthwith proceed to the investigation of the claims which shall be presented to their notice. They shall investigate and decide upon such claims in such order and in such manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of their respective governments. *The official correspondence which has taken place between the two governments respecting any claims shall be laid before the commissioners, and* they shall, *moreover*, be bound to receive and pursue all *other* written documents or statements which may be presented to them by or on behalf of the respective governments, in support of or in answer to any claim, and to hear, if required, one person on each side on behalf of each government, as counsel or agent for such government, on each and every separate claim. Should they fail to decide by a majority upon any individual claim, they shall

call to their assistance the arbitrator or umpire whom they may have agreed upon, or who may be determined by lot, as the case may be; and such arbitrator or umpire, after having examined *the official correspondence which has taken place between the two governments, and* the evidence adduced for and against the claim, and after having heard, if required, one person on each side, as aforesaid, and consulted with the commissioners, shall decide thereupon finally and without appeal.

[1][*If, however, it shall appear to the commissioners, or any two of them, that from the nature of any particular claim in regard to which they may have been unable to come to a decision, it is desirable that a special arbitrator or umpire shall be named, to whose decision such claim shall be referred,*] *the commissioners shall report to that effect to their respective governments, who shall thereupon, within six months,* [34] *agree upon some sovereign or head of* [2]*a friendly state who shall be invited to decide upon such claim, and before whom shall be laid the official correspondence which has taken place between the two governments, and the other written documents or statements which may have been presented to the commissioners in respect of such claims.*

The decision of the commissioners, and of the arbitrator or umpire, shall be given upon each claim in writing, and shall be signed by them respectively, and dated. [2][*The decision of the arbitrator or umpire on any particular claim so referred to him shall rule any other claims of the same class.*]

In the event of a decision involving a question of compensation to be paid, being arrived at by a special arbitrator or umpire, the amount of such compensation shall be referred back to the commissioners for adjudication; and in the event of their not being able to come to a decision, it shall then be decided by the arbiter or umpire appointed by them, or who shall have been determined by lot.

It shall be competent for each government to name one person to attend the commissioners as agent on its behalf, to present and support claims on its behalf, and to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America, hereby solemnly and sincerely engage to consider the decision of the commissioners, or of the arbitrator or umpire, as the case may be, as absolutely final and conclusive upon each of such claims decided upon by him or them respectively, and to give full effect to such decision without any objection or delay whatsoever.

It is agreed that no claim arising out of any transaction of a date prior to the 26th of July, 1853, the day of the exchange of the ratifications of the convention of the 8th of February, 1853, shall be admissible under this convention.

Article III.

Every claim shall be presented to the commissioners within six months from the day of their first meeting, unless in any case where reasons for delay shall be established to the satisfaction of the commissioners, or of the arbitrator or umpire in the event of the commissioners differing in opinion thereupon; and then and in any such case the period for presenting the claim may be extended to any time not exceeding three months longer.

The commissioners shall be bound to examine and decide upon every claim within two years from the day of their first meeting. It shall be competent for the commissioners, or for the arbitrator or umpire if they differ, to decide in each case whether any claim has or has not been duly made, preferred, or laid before them, either wholly, or to any and what extent, according to the true intent and meaning of this convention.

Article IV.

All sums of money which may be awarded by the commissioners, or by the arbitrator or umpire, on account of any claim, shall be paid in coin or its equivalent by the one government to the other, as the case may be, within *eighteen* months after the date of the decision, without interest.

Article V.

The high contracting parties engage to consider the result of the proceedings of this commission as a full and final settlement of every claim upon either government arising out of any transaction of a date prior to the exchange of the ratifications of the present convention; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said commission, shall, from and after the conclusion of the proceedings of the said commission, be considered and treated as finally settled and barred, *and thenceforth inadmissible.*

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[1] Subsequently altered in the signed convention; see page 37.

[2] Omitted at the request of the United States Government in the signed convention.

ARTICLE VI.

The commissioners *and the arbitrator or umpire appointed by them* shall keep an accurate record and correct minutes or notes of all their proceedings with the dates
[35] *thereof, and shall appoint and employ clerks or other persons to assist them in the transaction of the business which may come before them.

The secretary shall be appointed by Her Britannic Majesty's representative at Washington, and by the Secretary of State of the United States, jointly.

Each government shall pay the salaries of its own commissioners. All other expenses, and the contingent expenses of the commission, including the salary of the secretary, shall be defrayed in moieties by the two parties.

ARTICLE VII.

The present convention shall be ratified by Her Britannic Majesty and by the President of the United States, by and with the advice and consent of the Senate thereof; and the ratifications shall be exchanged at London as soon as may be, within twelve months from the date hereof.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at London, the —— day of ———, in the year of our Lord one thousand eight hundred and sixty-——.

No. 25.

The Earl of Clarendon to Mr. Thornton.

FOREIGN OFFICE, *December* 26, 1868.

SIR: In a telegram from Mr. Seward dated the 1st of December, which was communicated by Mr. Johnson to my predecessor, and in a dispatch from him dated the 27th of November, which was communicated by him to myself, Mr. Seward authorized Mr. Johnson, if the amendments proposed by the United States Government in the claims convention were accepted by the government of Her Majesty, to change the protocol of the 10th of November, respecting the island of San Juan, into a convention, and to sign the same.

In anticipation of the Government of the United States accepting the claims convention in the amended shape in which it is sent to you by this mail, and authorizing Mr. Johnson to sign it, I have to instruct you to recall to Mr. Seward's recollection the contingent authority he had previously given to Mr. Johnson to convert the San Juan protocol into a convention, and sign it, and suggest that Mr. Johnson should be again specifically authorized by telegraph to do so.

Mr. Johnson will probably have transmitted to Mr. Seward the San Juan protocol adapted to the form of a convention, and I inclose copies thereof for your information.

I am, &c.,
(Signed) CLARENDON.

No. 26.

The Earl of Clarendon to Mr. Thornton.

FOREIGN OFFICE, *January* 16, 1869.

SIR: Her Majesty's government having accepted the alterations proposed by Mr. Seward in the convention for the settlement of British and American claims, as stated in your telegraphic dispatch of the 11th

instant, I signed with Mr. Johnson that convention on the 14th instant, as well as a convention referring to arbitration the disputed line of water-boundary under the treaty of 1846.

Copies of these conventions are inclosed.

I am, &c.,

(Signed) CLARENDON.

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[36] *[Inclosure 1 in No. 26.]

Convention between Great Britain and the United States of America for the settlement of all outstanding claims; signed at London, January 14, 1869.

Whereas claims have at various times since the exchange of the ratifications of the convention between Great Britain and the United States of America, signed at London on the 8th of February, 1853, been made upon the government of Her Britannic Majesty on the part of citizens of the United States, and upon the Government of the United States on the part of subjects of Her Britannic Majesty; and whereas some of such claims are still pending, and remain unsettled, Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America, being of opinion that a speedy and equitable settlement of all such claims will contribute much to the maintenance of the friendly feelings which subsist between the two countries, have resolved to make arrangements for that purpose by means of a convention, and have named as their plenipotentiaries to confer and agree thereupon, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the right honorable George William Frederick, earl of Clarendon, Baron Hyde of Hindon, a peer of the United Kingdom, a member of Her Britannic Majesty's most honorable privy council, knight of the most noble order of the garter, knight grand cross of the most honorable order of the bath, Her Britannic Majesty's principal secretary of state for foreign affairs;

And the President of the United States of America, Reverdy Johnson, esquire, envoy extraordinary and minister plenipotentiary from the United States to Her Britannic Majesty;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed as follows:

ARTICLE I.

The high contracting parties agree that all claims on the part of subjects of Her Britannic Majesty upon the Government of the United States, and all claims on the part of citizens of the United States upon the government of Her Britannic Majesty, including the so-called Alabama claims, which may have been presented to either government for its interposition with the other since the 26th of July, 1853, the day of the exchange of the ratifications of the convention concluded between Great Britain and the United States of America, at London, on the 8th of February, 1853, and which yet remain unsettled; as well as any other such claims which may be presented within the time specified in Article III of this convention, whether or not arising out of the late civil war in the United States, shall be referred to four commissioners, to be appointed in the following manner, that is to say: two commissioners shall be named by Her Britannic Majesty, and two by the President of the United States, by and with the advice and consent of the Senate. In case of the death, absence, or incapacity of any commissioner, or in the event of any commissioner omitting, or declining, or ceasing to act as such, Her Britannic Majesty, or the President of the United States, as the case may be, shall forthwith name another person to act as commissioner in the place or stead of the commissioner originally named.

The commissioners so named shall meet at Washington at the earliest convenient period after they shall have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, without fear, favor, or affection to their own country, upon all such claims as shall be laid before them on the part of the governments of Her Britannic Majesty and of the United States, respectively; and such declaration shall be entered on the record of their proceedings.

The commissioners shall then, and before proceeding to any other business, name some person to act as an arbitrator or umpire, to whose final decision shall be referred any claim upon which they may not be able to come to a decision. If they should not

be able to agree upon an arbitrator or umpire, the commissioners on either side shall name a person as arbitrator or umpire; and in each and every case in which the commissioners may not be able to come to a decision, the commissioners shall de-
[37] termine by lot which of the two persons so named shall be *the arbitrator or umpire in that particular case. The person or persons so to be chosen as arbitrator or umpire shall, before proceeding to act as such in any case, make and subscribe a solemn declaration, in a form similar to that made and subscribed by the commissioners, which shall be entered on the record of their proceedings. In the event of the death, absence, or incapacity of such person or persons, or of his or their omitting, or declining, or ceasing to act as such arbitrator or umpire, another person shall be named, in the same manner as the person originally named, to act as arbitrator or umpire in his place and stead, and shall make and subscribe such declaration as aforesaid.

ARTICLE II.

The commissioners shall then forthwith proceed to the investigation of the claims which shall be presented to their notice. They shall investigate and decide upon such claims in such order and in such manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of their respective governments. The official correspondence which has taken place between the two governments respecting any claims shall be laid before the commissioners, and they shall, moreover, be bound to receive and peruse all other written documents or statements which may be presented to them by or on behalf of the respective governments, in support of or in answer to any claim, and to hear, if required, one person on each side on behalf of each government, as counsel or agent for such government, on each and every separate claim. Should they fail to decide by a majority upon any individual claim, they shall call to their assistance the arbitrator or umpire whom they may have agreed upon, or who may be determined by lot, as the case may be; and such arbitrator or umpire, after having examined the official correspondence which has taken place between the two governments, and the evidence adduced for and against the claim, and after having heard, if required, one person on each side as aforesaid, and consulted with the commissioners, shall decide thereupon finally and without appeal.

[1][Nevertheless, if the commissioners, or any two of them, shall think desirable that a sovereign, or head of a friendly state, should be arbitrator or umpire in case of any claim,] the commissioners shall report to that effect to their respective governments, who shall thereupon, within six months, agree upon some sovereign or head of a friendly state, who shall be invited to decide upon such claim, and before whom shall be laid the official correspondence which has taken place between the two governments, and the other written documents or statements which may have been presented to the commissioners in respect of such claims.

The decision of the commissioners, and of the arbitrator or umpire, shall be given upon each claim in writing, and shall be signed by them respectively, and dated.

In the event of a decision, involving a question of compensation to be paid, being arrived at by a special arbitrator or umpire, the amount of such compensation shall be referred back to the commissioners for adjudication; and in the event of their not being able to come to a decision, it shall then be decided by the arbitrator or umpire appointed by them, or who shall have been determined by lot.

It shall be competent for each government to name one person to attend the commissioners as agent on its behalf, to present and support claims on its behalf, and to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America, hereby solemnly and sincerely engage to consider the decision of the commissioners, or of the arbitrator or umpire, as the case may be, as absolutely final and conclusive upon each of such claims decided upon by him or them respectively, and to give full effect to such decision without any objection or delay whatsoever.

It is agreed that no claim arising out of any transaction of a date prior to the 26th of July, 1853, the day of the exchange of the ratifications of the convention of the 8th of February, 1853, shall be admissible under this convention.

[38] *ARTICLE III.

Every claim shall be presented to the commissioners within six months from the day of their first meeting, unless in any case where reasons for delay shall be established to the satisfaction of the commissioners, or of the arbitrator or umpire in the event of the commissioners differing in opinion thereupon; and then and in any such case

[1] The words between brackets were substituted at the request of the United States Government for the words also between brackets in the draught of the article in page 33.

the period for presenting the claim may be extended to any time not exceeding three months longer.

The commissioners shall be bound to examine and decide upon every claim within two years from the day of their first meeting. It shall be competent for the commissioners, or for the arbitrator or umpire, if they differ, to decide in each case whether any claim has or has not been duly made, preferred, or laid before them, either wholly or to any and what extent, according to the true intent and meaning of this convention.

ARTICLE IV.

All sums of money which may be awarded by the commissioners, or by the arbitrator or umpire, on account of any claim, shall be paid in coin or its equivalent by the one government to the other, as the case may be, within eighteen months after the date of the decision, without interest.

ARTICLE V.

The high contracting parties engage to consider the result of the proceedings of this commission as a full and final settlement of every claim upon either government arising out of any transaction of a date prior to the exchange of the ratifications of the present convention; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said commission, shall, from and after the conclusion of the proceedings of the said commission, be considered and treated as finally settled and barred, and thenceforth inadmissible.

ARTICLE VI.

The commissioners, and the arbitrator or umpire appointed by them, shall keep an accurate record and correct minutes or notes of all their proceedings, with the dates thereof, and shall appoint and employ clerks or other persons to assist them in the transaction of the business which may come before them.

The secretary shall be appointed by Her Britannic Majesty's representative at Washington, and by the Secretary of State of the United States, jointly.

Each government shall pay the salaries of its own commissioners. All other expenses, and the contingent expenses of the commission, including the salary of the secretary, shall be defrayed in moieties by the two parties.

ARTICLE VII.

The present convention shall be ratified by Her Britannic Majesty and by the President of the United States, by and with the advice and consent of the Senate thereof; and the ratifications shall be exchanged in London as soon as may be within twelve months from the date hereof.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at London, the fourteenth day of January, in the year of our Lord one thousand eight hundred and sixty-nine.

[L. S.] CLARENDON.
[L. S.] REVERDY JOHNSON.

[Inclosure 2 in No. 26.]

Convention between Her Majesty and the United States of America for referring to arbitration the water-boundary under Article I of the treaty of June 15, 1846; *signed at London, January* 14, 1869.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, being desirous to close all further discussion
[39] *with regard to the true direction of the line of water-boundary between their respective possessions, as laid down in Article I of the treaty concluded between them on the 15th of June, 1846, have resolved to conclude a treaty for this purpose, and have named as their plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the right honorable George William Frederick, earl of Clarendon, Baron Hyde of Hindon, a peer of the united kingdom, a member of Her Britannic Majesty's most honorable privy council, Knight of the Most Noble Order of the Garter, Knight Grand Cross of the Most Honorable Order of the Bath, Her Britannic Majesty's principal secretary of state for foreign affairs;

And the President of the United States of America, Reverdy Johnson, esquire, envoy extraordinary and minister plenipotentiary from the United States to Her Britannic Majesty;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed as follows:

Article I.

Whereas it was stipulated by Article I of the treaty concluded at Washington on the 15th of June, 1846, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, that the line of boundary between the territories of Her Britannic Majesty and those of the United States, from the point on the 49th parallel of north latitude up to which it had already been ascertained, should be continued westward along the said parallel of north latitude "to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly through the middle of the said channel, and of Fuca's Straits, to the Pacific Ocean;" and whereas the commissioners appointed by the two high contracting parties to mark out that portion of the boundary which runs southerly through the middle of the channel aforesaid have not been able to determine which is the true line contemplated by the treaty;

The two high contracting parties agree to refer to the President of the Swiss confederation to determine the line which, according to the terms of the aforesaid treaty, runs southerly through the middle of the channel which separates the continent from Vancouver's Island, and of Fuca's Straits, to the Pacific Ocean.

Article II.

If the referee should be unable to ascertain and determine the precise line intended by the words of the treaty, it is agreed that it shall be left to him to determine upon some line which, in his opinion, will furnish an equitable solution of the difficulty, and will be the nearest approximation that can be made to an accurate construction of the words of the treaty.

Article III.

It is agreed that the referee shall be at liberty to call for the production of, and to consult, all the correspondence which has taken place between the British and American Governments on the matter at issue, and to weigh the testimony of the British and American negotiators of the treaty, as recorded in that correspondence, as to their intentions in framing the article in question; and the referee shall further be at liberty to call for the reports and correspondence, together with any documents, maps, or surveys bearing on the same, which have emanated from or were considered by the commissioners who have recently been employed by the two governments to endeavor to ascertain the line of boundary, as contemplated by the treaty, and to consider all evidence that either of the high contracting parties may produce. But the referee shall not depart from the true meaning of the article as it stands, if he can deduce that meaning from the words of that article, those words having been agreed to by both parties, and having been inserted in a treaty ratified by both governments.

Article IV.

Should either government deliver to the referee a statement of its case, a copy thereof shall be at the same time communicated to the other party, through its representative in Switzerland, together with a copy of all papers or maps annexed to such state-
[40] ment. Each government shall, moreover, furnish to the other, on *application, a copy of any individually specified documents or maps in its own exclusive possession, relating to the matter at issue.

Each party shall be at liberty to draw up and lay before the referee a final statement, if it think fit to do so, in reply to the case of the other party, and a copy of such definitive statement shall be communicated by each party to the other, in the same manner as aforesaid.

The two high contracting parties engage to use their best exertions to place the whole of their respective case before the referee within twelve months after the exchange of the ratifications of the present treaty.

Article V.

The ministers or other public agents of Great Britain and of the United States at Berne shall be considered as the agents of their respective governments to conduct their case before the referee, who shall be requested to address all his communications and give all his notices to such ministers or other public agents, whose acts shall bind their governments to and before the referee on this matter.

ARTICLE VI.

It shall be competent to the referee to proceed in the said arbitration and all matters relating thereto, as and when he shall see fit, either in person or by a person or persons named by him for that purpose; either with closed doors or in public sitting; in the presence or absence of both agents; and either *viva voce* or by written discussion or otherwise.

ARTICLE VII.

The referee shall, if he thinks fit, appoint a secretary, registrar, or clerk for the purposes of the proposed arbitration, at such rate of remuneration as he shall think proper. He shall be requested to deliver, together with his award, a statement of all the costs and expenses which he may have been put to in relation to this matter; and the amount thereof shall forthwith be repaid in two equal portions, one by each of the two parties.

ARTICLE VIII.

The referee shall be requested to give his award in writing, as early as convenient after the whole case on each side shall have been laid before him, and to deliver one copy thereof, signed by him, to each of the said agents.

ARTICLE IX.

The respective parties formally engage to consider the decision of the referee, when given, as final and conclusive, whether such decision shall be a positive decision as to the line of boundary intended by the true meaning of the words of Article I of the treaty of 1846, or whether the said referee, being unable to give such positive decision, shall give as a decision a line of boundary as the nearest approximation to an accurate construction of those words, and as furnishing an equitable solution of the difficulty; and such decision shall, without reserve, be carried into immediate effect by commissioners to be appointed for the purpose of marking out the line of boundary, in accordance with such decision of the referee.

ARTICLE X.

The present treaty shall be ratified by Her Britannic Majesty and by the President of the United States, by and with the advice and consent of the Senate thereof, and the ratifications shall be exchanged at London as soon as may be within twelve months from the date hereof.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto their respective seals.

Done at London, the fourteenth day of January, in the year of our Lord one thousand eight hundred and sixty-nine.

[L. S.] CLARENDON.
[L. S.] REVERDY JOHNSON.

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[41] * No. 27.

Mr. Thornton to the Earl of Clarendon.

WASHINGTON, *January* 18, 1869. (Received January 31.)

MY LORD: I have the honor to inform your lordship that copies of the protocol on naturalization, of the convention on claims, and of that with regard to the San Juan question, lately concluded between England and the United States, have been officially communicated to the Senate by the President of the United States. No action has as yet been taken upon them by that body.

I have, &c.,
(Signed) EDWD. THORNTON.

No. 28.

Mr. Thornton to the Earl of Clarendon.

WASHINGTON, *January* 25, 1869. (Received February 6.)

MY LORD: I have the honor to inform your lordship that on the 19th instant Mr. Corbett, one of the Senators from Oregon, submitted to the Senate a memorial from certain citizens of Washington Territory relative to the San Juan question. I have not yet been able to obtain a copy of this memorial, but I understand that it protests against submitting the question of the claims of Great Britain to the Haro archipelago and the channel between San Juan and Vancouver's Islands to the arbitration of any foreign power. The memorialists set forth that, the United States having already conceded from the line of 54° 40′ to that of 49° for the sake of peace, neither their honor nor their interests will admit of further surrender of right.

Mr. Corbett stated that these views coincided with his own; he was satisfied, he said, that the United States Government only deviated from the line of the 49th parallel in order that Vancouver's Island might not be divided, and that in his opinion Great Britain had no right to the island of San Juan. He added that the deepest channel running between the two islands was the boundary line.

The memorial was ordered to be printed and referred to the Committee on Foreign Relations.

I have, &c.,
(Signed) EDWD. THORNTON.

No. 29.

Mr. Thornton to the Earl of Clarendon.

WASHINGTON, *February* 1, 1869. (Received February 15.)

MY LORD: With reference to my dispatch of the 25th ultimo, I have the honor to inclose three printed copies of the memorial therein alluded to, signed by certain citizens of Washington Territory, entreating the Senate not to consent that the question of the water-boundary of British Columbia should be submitted to arbitration.

Your lordship will observe that the statements upon which the memorialists found their objections are for the most part incorrect.

I have, &c.,
(Signed) EDWD. THORNTON.

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[42] [Inclosure in No. 29.]

Memorial of Marshall F. Moore, governor of Washington Territory, and other citizens of said Territory, remonstrating against any recognition of the claims of Great Britain to the Haro Archipelago, and to San Juan Island.

OLYMPIA, WASHINGTON TERRITORY,
December 7, 1868.

To the honorable the Senate of the United States:

Your memorialists, having learned that a proposition had been made to submit the unfounded claims of Great Britain to the Haro Archipelago, and especially to San Juan Island, to the arbitration of some foreign power, respectfully protest against any recognition of those claims whatever. The terms of the treaty of 1846 fix the boundary-

line along the Canal de Haro. The object of the deflection of the line from the forty-ninth parallel, being simply to give the whole of Vancouver's Island to Great Britain, can be exactly accomplished by this channel alone. The officers who negotiated and adopted the treaty, and the Senate by which it was ratified, acted with the full understanding that the Canal de Haro was the boundary. Having already conceded from the line of 54° 40′ to that of 49° for the sake of peace, neither the honor nor the interests of the United States will admit of further surrender of right.

We, therefore, entreat your honorable body to consent to no protocol nor convention that admits a doubt of our right to the Canal de Haro, or renders possible a surrender of these islands.

And your memorialists will ever pray, &c.,

(Signed)

MARSHALL F. MOORE,
Governor of Washington Territory.
HAZARD STEVENS,
Collector, &c.
S. D. HOWE,
Assessor of Internal Revenue, Washington Territory.
JOS. CUSHMAN,
Receiver, &c.
E. MARSH,
Register of the Land-Office.
FRANK CLARK.
H. G. STEINER.
J. E. WYCHE,
United States Judge of Washington Territory.
ELWOOD EVANS.
LEANDER HOLMES,
United States Attorney.
S. GARFIELD,
Surveyor-General, Washington Territory.
PHILIP D. MOORE,
Late Collector of Internal Revenue.
T. M. REED,
Chief Clerk, Surveyor-General's Office, Washington Territory.
E. L. SMITH,
Secretary, Washington Territory.
CHAS. A. WHITE,
Surveyor.
C. H. HALL,
Late Superintendent Indian Affairs.
E. GIELELING,
Late Acting Surveyor-General.
BENJ. HARNED,
Territorial Treasurer, Washington Territory.
C. S. KING,
United States Indian Agent.
LEVI SHELTON,
Territorial Librarian.
WM. HUNTINGTON,
United States Marshal.
B. F. DENNISON,
District Judge.
O. B. McFADDEN,
Late Chief Justice of Washington Territory.
W. W. MILLER,
Late Superintendent Indian Affairs.

No. 30.

Mr. Thornton to the Earl of Clarendon.

WASHINGTON, *February* 1, 1869. (Received February 15.)

MY LORD: I have the honor to inform your lordship that on the 29th ultimo Mr. Sumner presented a petition to the Senate signed by George

B. Upton, a merchant of Boston, relative to the claims convention lately signed by your lordship and Mr. Reverdy Johnson.

I have been unable as yet to obtain a copy of this petition, but I understand that Mr. Upton remonstrates against the ratification of the convention on account of the injustice which he asserts would
[43] thereby be done to himself and other *claimants. He adds that he has higher objections to its confirmation: "That the so-called treaty proposes to put upon the same footing claims by British subjects which have arisen under a disagreement in regard to the ordinary forms of neutrality, and claims of our own citizens upon the British government for piracies committed by British-built, British-manned, and British-armed vessels; by vessels and armaments which left British ports under the protection of the British flag, and burned American ships, and your memorialist's among the number, upon the high seas, without taking them into port for condemnation, and without any action being taken on the part of the British government, when these atrocities were laid before it, to prevent the same."

I should observe that although the whole petition was not read to the Senate, Mr. Sumner quoted that part of it which I have transcribed, stating that that presented its substance.

He then moved that it should be referred to the Committee on Foreign Relations, which was agreed to.

I have, &c.,
(Signed) EDWD. THORNTON.

P. S.—*February* 2.—I have just received a single copy of the above-mentioned petition from Boston, and have the honor to inclose it for your lordship's information.

E. T.

[Inclosure in No. 30.]

Petition.

To the honorable the Senate of the United States:

The undersigned, a citizen of the United States, respectfully memorializes and presents that he has read what purports to be a copy of a treaty between this country and Great Britain for the settlement of claims, and, among others, for a settlement of the so-called Alabama claims.

He respectfully remonstrates against the confirmation of the treaty on account of the injustice which would thereby be done to himself and other claimants. It is therein proposed to allow each nation twelve months' time for a confirmation, and two years thereafter for the commission to sit, and after closing their labors, then, if anything is found to be due, that a further period of eighteen months longer is allowed for payment, without interest. The mere statement of these points ought, perhaps, to settle the question of rejection. He, however, respectfully represents that he has higher objections to its confirmation.

This so-called treaty proposes to put upon the same footing claims by British subjects, which have arisen under a disagreement in regard to the ordinary forms of neutrality, and claims of our own citizens upon the British government for piracies committed by British-built, British-manned, and British-armed vessels; by vessels and armaments which left British ports under the protection of the British flag, and burned American ships, and your memorialist's among the number, upon the high seas, without taking them into port for condemnation, and without any action being taken, upon the part of said British government, when these atrocities were laid before it, to prevent the same; but on the contrary, these pirates were everywhere received with rejoicing when visiting British ports, and when the notorious builder of one of them boasted of the same in the British Parliament, of which he was a member, he was received with cheers and expressions of satisfaction. This shows, in the opinion of your memorialist, the *animus* of the British government toward the Government of the United States. He therefore respectfully protests, as an American citizen, against the confirmation of the

treaty, and prays that this Government will demand redress for its citizens, apart from all other claims, for the insults and injuries thus inflicted upon them and the country, through the willful negligence, or with the open approval, of the British government.

(Signed) GEO. B. UPTON.

BOSTON, *January* 27, 1869.

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[44] * No. 31.

Mr. Thornton to the Earl of Clarendon.

[Extract.]

WASHINGTON, *February* 22, 1869. (Received March 7.)

I have already had the honor to inform your lordship that the convention for the settlement of outstanding claims signed by your lordship and Mr. Reverdy Johnson on the 14th ultimo had been sent by the President to the Senate for their approval.

I now learn that on the 18th instant, at the meeting of the Senate Committee on Foreign Relations, its chairman, Mr. Sumner, brought forward the above-mentioned convention, and, after making a short comment upon its contents, and stating that it covered none of the principles for which the United States had always contended, recommended that the committee should advise the Senate to refuse their sanction to its ratification.

Six out of seven members of the committee were present, Mr. Bayard, Senator from Delaware, being absent; but his six colleagues, as I was told, voted, without any discussion or observations, adversely to the convention. It has consequently been represented as a unanimous vote of the committee, though it was not really so.

Mr. Sumner was accordingly authorized to report in that sense to the Senate.

I have the honor also to inclose copy of a resolution adopted by the legislature of Massachusetts protesting against the ratification of any convention which does not admit the liability of England for the acts of the Alabama and her consorts.

[Inclosure in No. 31.]

Resolution of Massachusetts legislature respecting claims convention.

Boston, February 19.—The following resolution, in reference to the treaty with Great Britain, was introduced in the Massachusetts legislature to-day and referred:

"*Resolved*, That the Massachusetts legislature, in general court assembled, firmly believe that any treaty between England and America touching the premises aforesaid, which may be submitted now or at any future time for ratification, which does not, by its terms, concede the liability of the English government for acts of her *protégés*, the Alabama and her consorts, will be spurned with contempt by the American people, and that a ratification thereof would be dishonorable to our nation and unjust to our citizens."

No. 32.

Mr. Thornton to the Earl of Clarendon.

WASHINGTON, *February* 22, 1869. (Received March 7.)

MY LORD: I have already had the honor to inform your lordship that the convention signed on the 14th ultimo by your lordship and Mr.

Reverdy Johnson, for referring to arbitration the water-boundary under Article I of the treaty of 15th June, 1846, was submitted to the Senate some time ago for their approval.

I have now learned that the committee of that body on foreign relations have authorized their chairman, Mr. Sumner, to make a report upon the convention to the Senate, and to recommend that they should sanction its ratification by the President.

I can hardly hope that time will be found to make the report or to take it into consideration during the present session; but there is no reason why it should not be in that which will be held after the 4th of next month.

I have, &c.,
(Signed) EDWD. THORNTON.

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[45] *No. 33.

Mr. Thornton to the Earl of Clarendon.

WASHINGTON, *February* 22, 1869. (Received March 7.)

MY LORD: When the protocol upon naturalization, signed by Lord Stanley and Mr. Reverdy Johnson, was sent to the Senate by the President, it was accompanied by a request that that body would express their opinion whether it would be expedient that a treaty should be concluded with Great Britain, founded upon the principles laid down in that protocol.

I understand that the Senate Committee on Foreign Affairs have charged their chairman, Mr. Sumner, to make a report to the Senate upon the protocol, and to recommend that the executive power be authorized to negotiate such a treaty with England.

The press of business is, however, now so great that it is not likely that this report will be made or taken into consideration during the present session, although it may be during that which will be held after the 4th of March.

I have, &c.,
(Signed) EDWD. THORNTON.

No. 34.

The Earl of Clarendon to Mr. Thornton.

FOREIGN OFFICE, *March* 22, 1869.

SIR: Mr. Reverdy Johnson called upon me to-day to propose that an amendment, of which I inclose a copy, should be made to Article I of the convention, as he thought it would satisfactorily meet the objections entertained by the Senate to the convention, and would secure its ratification by that body.

I remarked to Mr. Johnson that his proposal would introduce an entirely new feature into the convention, which was for the settlement of claims between the subjects and citizens of Great Britain and the United States; but that the two governments not having put forward any claims on each other, I could only suppose that his object was to favor the introduction of some claim by the Government of the United States for injury sustained on account of the policy pursued by Her Majesty's government.

Mr. Reverdy Johnson did not object to this interpretation of his amendment, but said that if claims to compensation on account of the recognition by the British government of the belligerent rights of the confederates were brought forward by the Government of the United States, the British government might, on its part, bring forward claims to compensation for damages done to British subjects by American blockades, which, if the confederates were not belligerents, were illegally enforced against them.

I replied that amendments had repeatedly been made during the negotiations in order to meet the wishes of the United States Government, and to secure, as it was said, the assent of the Senate, but that our course of proceeding had not been met in a corresponding spirit; and we only knew that, contrary to custom, the convention had at once been published, not only before it was ratified, but before it had been taken into consideration by the Senate; and that, to this day, we had not been informed of the objections made to the convention by the committee of the Senate, or whether the Senate would come to a decision upon it or not.

Under all these circumstances, I said that it did not seem proper for Her Majesty's government to take any further step in the matter, or to adopt any amendment of the convention, even if it had been free from objection.

Mr. Johnson requested me to take it into consideration, and I assured him that I would bring his proposal to the knowledge of my colleagues, but that I did not think their view of it would differ from my own.

I am, &c.,
(Signed) CLARENDON.

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[46] *[Inclosure in No. 34.]

Amendment to Article I of claims convention.

ARTICLE I. The high contracting parties agree that all claims on the part of Her Britannic Majesty's government upon the Government of the United States, and all claims on the part of the Government of the United States upon the government of Her Britannic Majesty, and all claims upon the part of subjects of Her Britannic Majesty upon the Government of the United States * * * *

No. 35.

Mr. Reverdy Johnson to the Earl of Clarendon.

LEGATION OF THE UNITED STATES,
London, March 25, 1869. (Received March 25.)

MY LORD: I know you fully concur with me, that it is important to the interest and tranquillity of both our countries that the convention signed by us on the 14th of January last should go into operation. As this cannot be effected without the ratification of the convention by the Senate of the United States, it is necessary to remove the objection which that body is supposed to entertain to it. I have reason to believe that the objection consists in the fact that the convention provides only for the settlement by arbitration of the individual claims of British subjects and American citizens upon our respective governments, and not for any claims which either government as such may have upon the

other. If I am right in this, as I think I am, the principle of arbitration is not disapproved of. On the contrary, all that the Senate desires is, that the entire controversy as to claims shall be included within it, so as thereby to be finally settled.

My Government believe, as I am now advised, that it has a claim of its own upon Her Majesty's government, because of the consequences resulting from a premature recognition of the confederates during our late war, and from the fitting out of the Alabama and other similar vessels in Her Majesty's ports, and from their permitted entrance into other ports to be refitted and provisioned during their piratical cruise.

The existence of such a claim makes it necessary that its ascertainment and adjustment shall be provided for, as the individual claims growing out of the same circumstances.

As I explained to your lordship, at the interview which I had the honor to have with you on Monday, the 22d instant, the decision of the arbitration upon the claim in question may be such as to give to Her Majesty's government a claim upon the United States. I therefore now officially propose to your lordship that we sign a supplemental convention, which shall only so far alter the one of the 14th of January as to provide that the claims which either government may have upon the other shall be included within it, and be settled in the same way. This can be done by inserting in the first article, after the word "agree" in the first line, these words: "That all claims on the part of Her Majesty's government upon the Government of the United States, and all claims of the Government of the United States upon Her Majesty's government," and leaving the rest of the article unchanged.

Such a provision as this would, I have every reason to believe, at once result in the ratification of the convention by the Senate. And as it would in no degree compromise the rights or honor of either government, but merely carry out the principle of arbitration upon which the convention of the 14th of January rests, I earnestly hope that Her Majesty's government will consent to it.

If this is done, and the convention is ratified, every existing controversy between our two countries will soon be amicably settled, as it is certain that the naturalization protocol and the San Juan convention meet with no opposition.

Soliciting as early a reply as your lordship can conveniently give me, I have, &c.,

(Signed) REVERDY JOHNSON.

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[47] *No. 36.

The Earl of Clarendon to Mr. Reverdy Johnson.

FOREIGN OFFICE, *March* 27, 1869.

SIR: I have the honor to acknowledge the receipt of your letter of the 25th instant, proposing the signature of a convention supplementary to that of the 14th of January, by which provision would be made that the claims which either government may have upon the other shall be included within the convention of the 14th of January, and settled in the same way; and I beg leave to acquaint you, in reply, that immediately on the return of my colleagues to London, several of whom are absent during the short Easter recess, your letter shall have their attentive consideration.

In the mean time, however, I request you will have the goodness to inform me whether the proposal contained in your letter is made in pursuance of express instructions from the Government of the United States, as I do not clearly understand from your letter that such is the case.

I am, &c.,
(Signed) CLARENDON.

No. 37.

The Earl of Clarendon to Mr. Thornton.

FOREIGN OFFICE, *March* 27, 1869.

SIR: With reference to my dispatch of the 22d instant, giving an account of a conversation with Mr. Johnson respecting the claims convention, I now inclose a copy of a letter which I have since received from him,[1] formally proposing the signature of a supplemental convention, by which the previous convention would be made applicable to claims that might be preferred by the respective governments on each other.

I also inclose a copy of a letter which I have addressed to Mr. Johnson[2] acknowledging his letter, and acquainting him that it would be considered on the re-assembling of the cabinet after the Easter recess.

You will consider the matter referred to in this correspondence as confidential for the present, at least so far as not to initiate any communication upon it.

I am, &c.,
(Signed) CLARENDON.

No. 38.

Mr. Reverdy Johnson to the Earl of Clarendon.

UNITED STATES LEGATION,
London, March 29, 1869. (Received March 29.)

MY LORD: I have the honor to receive your note of the 27th instant, and shall look with solicitude to the determination of your government upon the proposition contained in my official note to you of the 25th.

That proposition was not made in pursuance of any express instructions of my Government, but under the ample authority conferred upon me when I came to this country and since; an authority which has never been revoked, or in any particular modified.

Repeating my opinion that the acceptance of the proposition would result in the ratification by the Senate of the claims convention of the 14th of January last, I have, &c.,
(Signed) REVERDY JOHNSON.

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[1] No. 35. [2] No. 36.

[48] *No. 39.

Mr. Thornton to the Earl of Clarendon.

WASHINGTON, *March* 23, 1869. (Received April 4.)

MY LORD: I have been informed by Mr. Sumner, the chairman of the Committee on Foreign Relations, that the convention on claims signed by your lordship on the 14th January last will be submitted to the Senate in executive session as soon as an opportunity shall offer. But all other business has been delayed by the prolonged discussion on the tenure-of-office act.

It has been reported by the newspapers and elsewhere that Mr. Sumner has prepared a lengthy exposition which will be submitted with the committee's adverse report on the convention, and that its tone would tend to excite a warlike feeling against England. When I last saw Mr. Sumner, a few days ago, he of his own accord alluded to these reports, and declared in an earnest manner that his statement on the convention would in no way display a hostile spirit against us, but would merely set forth and support, by strong arguments, the views held by the people of the United States with respect to the course pursued by England during the late civil war with regard to the Southern States.

As far as it is possible to form an opinion of so numerous a body as the Senate, voting in secret session upon the convention in question, my belief is that it will fail to obtain in its favor the necessary two-thirds of their votes.

I have, &c.,
(Signed) EDWD. THORNTON.

No. 40.

The Earl of Clarendon to Mr. Reverdy Johnson.

FOREIGN OFFICE, *April* 8, 1869.

SIR: In my letter of the 27th ultimo I had the honor to inform you that Her Majesty's government would attentively consider the proposal respecting the claims convention contained in your letter of the 25th ultimo, which has for its object, by the insertion of a few words in Article I, to include in the convention the claims that either government might have on the other, as well as private claims.

Her Majesty's government could not fail to observe that this proposal involved a wide departure from the tenor and terms of the convention of 1853, to which, in compliance with your instructions, you have constantly pressed Her Majesty's government to adhere, as necessary to insure the ratification of a new convention by the Senate of the United States,

No undue importance is attached to this deviation, but I beg leave to inform you that in the opinion of Her Majesty's government it would serve no useful purpose now to consider any amendment to a convention which gave full effect to the wishes of the United States Government, and was approved by the late President and Secretary of State, who referred it for ratification to the Senate, where it appears to have encountered objections, the nature of which has not been officially made known to Her Majesty's government.

I am, &c.,
(Signed) CLARENDON.

No. 41.

Mr. Reverdy Johnson to the Earl of Clarendon.

LEGATION OF THE UNITED STATES,
London, April 9, 1869. (Received April 9.)

MY LORD: I have the honor to acknowledge the receipt of your lordship's note of yesterday.

It is not my present purpose to renew the proposition contained in my letter of the 25th of March, nor to withdraw it. I felt myself entirely justified in making it by my instructions from the late administration of my Government.

My sole object in addressing your lordship now is to meet the difficulty, *which your lordship suggests, to Her Majesty's government [49] agreeing to the proposition in question, "that it would involve a wide departure from the tenor and terms of the convention of 1853." In this I think your lordship is mistaken. The design of the convention of 1853 was to settle all claims which either government, in behalf of its own citizens or subjects, might have upon the other, the mode of settlement being the submission of them to a joint commission, with the authority, in case the commissioners differed upon any claim, to call in the assistance of an umpire. At that time neither government, as such, made a demand upon the other. But that, as my proposition assumes, is not the case now. The Government of the United States believes that it has in its own right a claim upon the government of Her Majesty. In order, therefore, to a full settlement of all existing claims, it is necessary that the one which my Government makes, and any corresponding claim which Her Majesty's government may have upon the United States, should be included within the convention of the 14th of January, 1869.

My instructions, to which your lordship refers, were to provide for the settlement of the claims mentioned in such instructions by a convention upon the model of the one of the 8th of February, 1853. That I did not suggest, in the negotiations which led to the convention of January, the including within it any governmental claims, was because my instructions only referred to the individual claims of citizens and subjects.

I forbear to speculate as to the grounds upon which my instructions were so limited. I make the proposition contained in my note of the 25th of March because I have reason to believe that the omission in the convention of January, which would be supplied by the modification suggested, is the principal, if not the only, objection to the ratification of the convention by the Senate of the United States.

I am gratified to be able to infer from your lordship's note that "no undue importance is attached to this deviation," which your lordship supposes would be the effect of the suggested change; that if it had been made, or should hereafter be made, under positive instructions from my Government, and Her Majesty's government had reason to think that it would terminate the entire controversy, that it would be acceded to.

I shall, at the earliest moment, forward this correspondence to my Government, with the hope that it may have a satisfactory result.

I have, &c.,
(Signed) REVERDY JOHNSON.

No. 42.

The Earl of Clarendon to Mr. Thornton.

FOREIGN OFFICE, *April* 9, 1869.

SIR: I had a conversation with Mr. Reverdy Johnson on the 5th instant, when I told him that Her Majesty's confidential advisers had not yet considered the proposal respecting a supplemental claims convention contained in his letter of the 25th of March, of which a copy was transmitted to you in my confidential dispatch of the 27th of that month, but that I had spoken of it to some of my colleagues.

It appeared to them, I said, as it did to me, that by the adoption of his proposal an entirely new principle would be admitted, at variance with the convention of 1853, which Her Majesty's government were all along told was to be the model of a new claims convention. Her Majesty's government, I said, had made various concessions in order to meet the wishes of the Government of the United States, and those which the Senate were supposed to entertain. Two months and more had elapsed without action being taken by the Senate beyond the publication of the convention. Her Majesty's government, I added, did not know what were the objections of the Senate; and, although General Grant had been installed for a month, they had had no communications, either through yourself or through Mr. Johnson, as to the views of the Government of the United States, though rumors were not wanting as to the feeling being hostile.

Mr. Johnson, I said, was no doubt acting on his instructions, but they were the instructions given to him by the last Government,
[50] and Her Majesty's government *could not consider a communication not made by the authority of the present Government. He had had experience enough of the hearty desire of Her Majesty's past and present government, and of the people of England, to efface all cause of misunderstanding, and to establish the most friendly relations with the United States; but it would not be consistent with the honor and dignity of England now to amend a treaty already signed, in the possibly fallacious hope that we should thereby meet objections, of the real character of which we were wholly ignorant.

I am, &c.,
(Signed) CLARENDON.

No. 43.

The Earl of Clarendon to Mr. Thornton.

FOREIGN OFFICE, *April* 10, 1869.

SIR: With reference to my dispatches of the 27th ultimo, and of yesterday's date, I inclose, for your information, copies of a further correspondence with Mr. Reverdy Johnson on the subject of the claims convention.[1]

I am, &c.,
(Signed) CLARENDON.

[1] Nos. 38, 40, and 41.

No. 44.

Mr. Thornton to the Earl of Clarendon.

[Extract.]

WASHINGTON, *March* 29, 1869. (Received April 13.)

I have the honor to inform your lordship that the convention on claims lately signed by your lordship has not yet been submitted to the Senate in executive session by the chairman of the Committee on Foreign Affairs. It is even whispered that no decision will be taken upon it, but that it will be allowed to lie dormant.

I have not thought it expedient to refer to the subject at all with the Secretary of State during the last few days; but at an interview which I had with him yesterday I spoke to him upon the subject of the convention for submitting the question of the island of San Juan to arbitration, and expressed my hope that, as the Committee on Foreign Affairs had authorized their chairman to report favorably upon it, the Senate would proceed to give it their sanction; for that a joint occupation of the island, although it had been amicably carried out for several years, was at best a delicate business, and might at any moment give rise to a collision.

Mr. Fish merely expressed a hope that the question would be settled, without giving an opinion whether the Senate would take the San Juan convention into consideration during the present session.

No. 45.

The Earl of Clarendon to Mr. Thornton.

FOREIGN OFFICE, *April* 14, 1869.

SIR: Her Majesty's government approve your proceedings respecting the claims and San Juan boundary conventions, as reported in your dispatch of the 29th ultimo.

I am, &c.,

(Signed) CLARENDON.

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[51] No. 46.

The Earl of Clarendon to Mr. Reverdy Johnson.

FOREIGN OFFICE, *April* 15, 1869.

SIR: I have had the honor to receive your letter of the 9th instant, explaining the grounds on which you felt warranted in proposing the amendment in the claims convention, which, in your letter of the 25th ultimo, you had submitted for the consideration of Her Majesty's government.

In order to prevent future misunderstanding, I feel it my duty to refer to one passage in your letter.

You say "that you are gratified to be able to infer from your lordship's note, that no undue importance is attached to this deviation, which your lordship supposes would be the effect of the suggested

change; that if it had been made, or should hereafter be made, under positive instructions from my Government, and Her Majesty's government had reason to think that it would terminate the entire controversy, that it would be acceded to."

In saying that "no undue importance is attached to this deviation," I intended to convey that Her Majesty's government did not think that a rigid adherence to the terms and tenor of the convention of 1853 was of material consequence. Beyond this my meaning did not go, and consequently I did not intend to imply that your proposed alteration of Article I of the convention of January 14 would be acceptable to Her Majesty's government.

I am, &c.,
(Signed) CLARENDON.

No. 47.

Mr. Reverdy Johnson to the Earl of Clarendon.

LEGATION OF THE UNITED STATES,
London, April 16, 1869. (Received April 16.)

MY LORD: I have the honor to acknowledge the receipt of your note of yesterday relating to the claims convention. The inference which I drew from that part of your reply to my letter of the 25th of March, which I quoted, was not only the one which I supposed could be deduced from it, but under the circumstances was the only one to be drawn from it. Your lordship's note, however, of yesterday is conclusive that you did not design the meaning I attached to your note of the 8th instant, and I will lose no time in so informing my Government.

I have, &c.,
(Signed) REVERDY JOHNSON.

No. 48.

The Earl of Clarendon to Mr. Thornton.

FOREIGN OFFICE, *April* 17, 1869.

SIR: With reference to my dispatch of the 10th instant, I inclose, for your information, copies of further correspondence with Mr. Johnson respecting the claims convention.[1]

I am, &c.,
(Signed) CLARENDON.

No. 49.

Mr. Thornton to the Earl of Clarendon.

[Extract.]

WASHINGTON, *April* 19, 1869. (Received May 3.)

I have the honor to inform your lordship that the claims convention signed by your lordship on the 14th of January last was submitted to the Senate in executive session on the 13th instant, with the

[1] Nos. 46 and 47.

[52] adverse report which had *previously been decided upon by the Committee on Foreign Relations. Mr. Sumner availed himself of the occasion to make a long speech on the subject, and as the Senate subsequently ordered that his speech should be made public, it has been inserted in all the newspapers in the country. It was followed by a few more, all in the same sense, of which that of Mr. Chandler, Senator from Michigan, seems to have been the most violent against England, and in it he plainly indicated his desire that Great Britain should possess no territory upon this continent.

A vote was taken on the same day, fifty-four Senators voting against it, and only one in its favor.

Your lordship will preceive that the sum of Mr. Sumner's assertions is that England insulted the United States by the premature, unfriendly, and unnecessary proclamation of the Queen, enjoining neutrality on Her Majesty's subjects; that she owes them an apology for this step; that she is responsible for the property destroyed by the Alabama and other confederate cruisers, and even for the remote damage to American shipping interests, including the increase of the rate of insurance; that the confederates were so much assisted by being able to get arms and ammunition from England, and so much encouraged by the Queen's proclamation, that the war lasted much longer than it would otherwise have done, and that we ought therefore to pay imaginary additional expenses imposed upon the United States by the prolongation of the war.

Mr. Sumner lays stress upon the umpire or two umpires being selected by the commissioners, and in the latter case on one of them being chosen by lot to decide upon any particular case; and adds that the subsequent provision for naming a sovereign or head of a friendly state is not sufficient to remedy the evil of which he complains; while he altogether omits to allude to the fact that at the will of the two commissioners on the one side or the other, any matter in dispute, from the highest international question to the lowest consideration of pecuniary compensation, may be referred to the single umpire agreed upon by the two governments.

Mr. Sumner asserts that the confederate bonds rose in price on the announcement of the signature of the convention, and he insinuates that the claims of the bondholders would be submitted to the commission; but he can hardly suppose the English commissioners to admit such claims, and I can therefore only look upon this insinuation as an endeavor to excite an unfair opposition to the contents of the convention.

It is not worth while to discuss the nice distinction which Mr. Sumner makes between belligerency by land and that on the ocean. But even if it be possible to separate the two, his argument is chiefly supported by "belittling" (to use his own phrase) the important right of blockade which was asserted by the United States, and which imposed upon neutrals the obligation of providing for the rights of their own subjects. The alternative of closing the ports of the Southern States is alluded to as if there would be no question that such a measure would have been acquiesced in by neutral powers.

It is needless to follow Mr. Sumner in his history of the building and escape of the Alabama, and of her subsequent reception; for these are the points which the convention virtually consents should be submitted to arbitration; and I may here observe that although Mr. Sumner brings forward, as grounds of complaint against England, administrative measures which Her Majesty's government would probably never

agree should be submitted to the judgment of any umpire, his speech does not contain any protest against the principle of arbitration.

In speaking of the reparation which it is claimed is due by Great Britain to the United States on account of Her Majesty's proclamation of neutrality, Mr. Sumner brings forward as precedents the case of the Chesapeake boarded by the Leopard, and that of the Caroline destroyed in American waters in 1837, in the former of which the act was disavowed by His Majesty's government, and compensation was made, and, in the other, though the circumstances fully warranted the act, regret was expressed that necessity should have compelled a violation of American jurisdiction; but to compare with these two cases Her Majesty's proclamation, issued by the deliberate advice of Her Majesty's government, which they were called upon to give in consequence of the President's declaration of blockade, seriously affecting all neutrals, seems an incomprehensible display of unfair argument.

Mr. Sumner proceeds to consider the losses, individual and national, originating from our conduct. He states that the former amount to about £3,000,000 sterling, being the value of the ships and car-
[53] goes destroyed by the Alabama and other *confederate cruisers. I can hardly believe, however, that any reasonable American, even including Mr. Sumner, can conscientiously assert that there is the slightest ground for remonstrance against England with regard to the conduct of any of the other cruisers, whatever there may be with regard to the Alabama. I understand further that some of the claims presented on account of these losses could not be sustained by the necessary proofs.

Mr. Sumner claims that American shipping suffered an immense loss on account of the confederate cruisers, and cites as a proof of this loss the decrease in American and the increase in British tonnage during the war; but he ignores the fact that the transfer of American vessels to the English flag was almost entirely fictitious, and that the owners, capital, masters, and crews were really the same and American, although under English names and flag. There was, consequently, very little actual, but only an apparent, loss. That since the war ship-building has gradually decreased, and is still decreasing in an extraordinary manner, must be traced to some other causes than the former proceedings of the confederate cruisers.

The idea of England being responsible for a certain portion of the expenses of the American civil war, on account of its prolongation due to the policy of Great Britain and the presence on the seas of confederate cruisers, seems almost too preposterous to entertain; but the absurdity of it appears at once by the consideration that, if the pretension were to be admitted, a nice examination would have to be made, what proportion of the losses on shipping interests and by increased insurance would be due by us on account of the Alabama, and what proportion should be assigned to the other confederate cruisers, two of which, the Sumter and Nashville, actually sailed from confederate ports, with commissions from the confederate government; and further, if we are to be responsible for a part of the expenses of the war on account of its prolongation, we should have a right to know how far the United States Government are responsible for it, and to insist upon an impartial jury to examine into and decide upon the general conduct of the naval and military operations during the war.

Your lordship will observe that Mr. Sumner claims to be animated with an anxious desire that peace should be maintained with Great Britain; yet I know of no arguments more calculated than those con-

tained in his speech to excite the passions of his countrymen and to inflame that animosity which, unhappily, it is but too apparent they still feel against England.

The speech has been vehemently applauded by the whole of the republican portion of the press that has as yet reached this city, and most of them openly proclaim that the only satisfaction the United States Government can accept will be the cession of our possessions on this continent, as well as the Bahama Islands; a mode of settlement which has frequently been hinted at to me.

Your lordship will doubtless have observed that, with reference to the claims convention, there have been two violations of the rules which are supposed to be in force with regard to all treaties negotiated with this country. The first is, that the claims convention was published in the newspapers of this country before any action had been taken upon it by the Senate; and the second that, contrary to custom, the Senate authorized the publication of Mr. Sumner's speech made in executive session. Both these acts seem to have been done in a spirit unfriendly to England, though they are probably of little importance.

No. 50.

Mr. Thornton to the Earl of Clarendon.

WASHINGTON, *April* 19, 1869. (Received May 2.)

MY LORD: The Secretary of State has verbally informed me that the protocol on the subject of naturalization, signed by Lord Stanley on the 9th of October last, has been taken into consideration by the Senate, and approved by that body. A resolution, of the exact tenor of which Mr. Fish was unable to inform me, was adopted, that the President should be authorized to enter into negotiations with Her Majesty's government for a treaty founded on the contents of the above-mentioned protocol.

I have, &c.,
(Signed) EDWD. THORNTON.

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[54] *No. 51.

Mr. Reverdy Johnson to the Earl of Clarendon.

LEGATION OF THE UNITED STATES,
London, May 3, 1869. (Received May 3.)

MY LORD: I hand you herewith a copy of the resolution of the Senate of the United States that that body does "not advise and consent to the ratification of the convention," signed by your lordship and myself on the 14th of January last, for the adjustment of outstanding claims on the part of citizens and subjects of the two governments.

Notwithstanding this action of the Senate, I hope your lordship will not infer that it is the determination of that body, or of the President of the United States, not to settle the causes of difference upon the same subjects as were embraced in the convention of January, upon terms perfectly consistent with the rights and honor of both nations.

I think you will see conclusive evidence of this in the concluding paragraph of the dispatch from my Government inclosing the Senate's resolution to me, which is as follows: "The President, however, is not without hope that, upon a further consideration by the two governments of the questions involved in the negotiation, they may still be found to be susceptible of an amicable and satisfactory adjustment."

Your lordship is herewith furnished with a copy of the dispatch referred to.

In the hope thus expressed by the President all the good men of both countries must unite.

It is, indeed, impossible to suppose that governments as enlightened as ours can fail at any time to adjust all differences which may arise between them in an amicable way, and so as not only to remove controversies which may disturb their peaceful relations, but so to remove them that such relations will not only be continued but strengthened.

I pray, &c.,
(Signed) REVERDY JOHNSON.

[Inclosure 1 in No. 51.]

Mr. Fish to Mr. Reverdy Johnson.

DEPARTMENT OF STATE,
Washington, April 19, 1869.

SIR: After having had under consideration for a period of three months the convention between the United States and Great Britain for the adjustment of claims, signed by Lord Stanley and yourself, at London, on the 14th of January last, the Senate of the United States, on the 13th instant, adopted a resolution, a copy of which is inclosed, declining to give its advice and consent to the ratification of that instrument.

The vote of the Senate in opposition to the ratification was practically unanimous, there being only one in favor of it and fifty-four against it.

The President, however, is not without hope that, upon a further consideration by the two governments of the questions involved in the negotiation, they may still be found to be susceptible of an amicable and satisfactory adjustment.

I am, &c.,
(Signed) HAMILTON FISH.

[Inclosure 2 in No. 51.]

Resolution of the Senate of the United States.

IN EXECUTIVE SESSION,
Senate of the United States, April 13, 1869.

Resolved, That the Senate do not advise and consent to the ratification of the convention between the United States and Great Britain, signed at London January 14, 1869, providing for the adjustment of all outstanding claims of citizens and subjects of the parties, respectively, two-thirds of the Senators present not agreeing to the ratification thereof.

Attest:
(Signed) GEO. C. GORHAM, *Secretary.*

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[55] *No. 52.

Mr. Reverdy Johnson to the Earl of Clarendon.

LEGATION OF THE UNITED STATES,
London, May 3, 1869. (Received May 3.)

MY LORD: I have the honor to inclose to you a copy of the resolution of the Senate of the United States ratifying the protocol on the subject

of naturalization signed by Lord Stanley and myself on the 9th of October last, and stating that "the Senate advise and consent to the negotiation of a convention between the two governments founded upon the terms of the protocol."

In a dispatch, dated the 19th of April, inclosing the resolution, I am instructed to inform Her Majesty's government "that the Government of the United States stand ready, whenever it shall be the pleasure of Her Majesty's government, to conclude a convention upon that basis." A copy of the dispatch accompanies this note.

Renewing, &c.,
(Signed) REVERDY JOHNSON.

[Inclosure 1 in No. 52.]

Mr. Fish to Mr. Reverdy Johnson.

DEPARTMENT OF STATE.
Washington, April 19, 1869.

SIR: I have to inform you that by a resolution of the 13th instant, a copy of which is inclosed, the Senate of the United States advised and consented to the negotiation of a convention between the United States and Great Britain, regulating the citizenship of persons who emigrate to and from the two countries, based upon the protocol signed by yourself and Lord Stanley, at London, on the 9th of October last.

You will inform Lord Clarendon of this action of the Senate, and state to him that the Government of the United States stand ready, whenever it shall be the pleasure of Her Majesty's government, to conclude a convention upon that basis.

I am, &c.,
(Signed) HAMILTON FISH.

[Inclosure 2 in No. 52.]

Resolution of the Senate of the United States.

IN EXECUTIVE SESSION,
Senate of the United States, April 13, 1869.

Resolved, That, in reply to the message of the President of the United States of the 15th of January, 1869, transmitting a protocol for a convention between the United States and Great Britain regulating the citizenship of persons who emigrate to and from the two countries, the Senate advise and consent to the negotiation of a convention between the two powers based on the protocol above mentioned.

Attest:
(Signed) GEO. C. GORHAM, *Secretary.*

No. 53.

The Earl of Clarendon to Mr. Reverdy Johnson.

FOREIGN OFFICE, *May* 4, 1869.

SIR: I have the honor to acknowledge the receipt of your letter of the 3d instant, inclosing a copy of a dispatch from the Secretary of State of the United States, dated the 19th of April, with a resolution of the Senate dated the 13th of the month, stating "that the Senate do not

advise and consent to the ratification of the convention between the United States and Great Britain, signed at London January 14, 1869, providing for the adjustment of all outstanding claims of citizens and subjects of the parties, respectively, two-thirds of the Senators present not agreeing to the ratification thereof."

[56] *Mr. Fish, in the last paragraph of his dispatch, says that "the President, however, is not without hope that, upon a further consideration by the two governments of the questions involved in the negotiation, they may still be found to be susceptible of an amicable and satisfactory adjustment."

In the hope thus expressed by the President, I have the honor to state to you that Her Majesty's government cordially concur. During your residence in this country you must have had abundant evidence that it was the desire of the government and people of England that all differences between the two countries should be honorably settled, and that their relations with the United States should be of a most friendly character.

I am, &c.,
(Signed) CLARENDON.

No. 54.

The Earl of Clarendon to Mr. Reverdy Johnson.

FOREIGN OFFICE, *May* 4, 1869.

SIR: I have the honor to acknowledge the receipt of your letter of the 3d instant, inclosing a copy of a dispatch from the Secretary of State of the United States, dated the 19th of April, with a resolution of the same dated the 13th of that month, stating "that, in reply to the message of the President of the United States of the 15th of January, 1869, transmitting a protocol for a convention between the United States and Great Britain, regulating the citizenship of persons who emigrate to and from the two countries, the Senate advise and consent to the negotiation of a convention between the two powers based on the protocol above mentioned."

Mr. Fish instructs you to state to me "that the Government of the United States stand ready, whenever it shall be the pleasure of Her Majesty's government, to conclude a convention on that basis."

I have the honor to state to you, in reply, that, notwithstanding the great pressure of business in Parliament, Her Majesty's government propose, if possible, during the present session, to submit to Parliament a bill which, if passed into law, will admit of their negotiating and concluding with the Government of the United States a convention on this important matter.

I am, &c.,
(Signed) CLARENDON.

No. 55.

The Earl of Clarendon to Mr. Thornton.

FOREIGN OFFICE, *May* 5, 1869.

SIR: I transmit to you herewith, for your information, a copy of a note I have addressed to Mr. Reverdy Johnson,[1] in reply to one I received from him forwarding to me a copy of a dispatch from Mr. Fish, with a copy of the resolution of the Senate ratifying the protocol on naturalization signed by Lord Stanley and Mr. Reverdy Johnson on the 9th of October last, a copy of which was sent to you in Lord Stanley's dispatch of the same date.

I am, &c.,
(Signed) CLARENDON.

No. 56.

The Earl of Clarendon to Mr. Thornton.

FOREIGN OFFICE, *May* 5, 1869.

SIR: I transmit to you herewith, for your information, a copy of a note I have addressed to Mr. Reverdy Johnson,[1] in reply to one I
[57] received from him inclosing *a copy of a dispatch from Mr. Fish, with a copy of the resolution of the Senate declining to ratify the convention signed between the United States and this country on January 14, providing for the adjustment of all outstanding claims of citizens and subjects of the two countries, a copy of which was inclosed in my dispatch No. 16, of January 16.

I am, &c.,
(Signed) CLARENDON.

No. 57.

Mr. Thornton to the Earl of Clarendon.

[Extract.]

WASHINGTON, *April* 26, 1869. (Received May 10.)

I have the honor to inform your lordship that the convention lately signed relative to the island of San Juan has been brought before the Senate, and a long speech, recommending that it should not be approved, was made by Mr. Garrett Davis, a Senator from Kentucky. The principal argument used was, that the right of the United States to the possession of the island was so extremely clear that the question was not one which ought to be submitted to arbitration. It was, however, finally decided by the Senate that the further consideration of the convention should be deferred until the next session of that body, which will open in December.

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[1] No. 54.

NORTH AMERICA. No. 1 (1870.)

CORRESPONDENCE

RESPECTING THE

ALABAMA CLAIMS, 1869–'70.

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[1] CORRESPONDENCE RESPECTING THE ALABAMA CLAIMS: 1869–'70.

No. 1.

The Earl of Clarendon to Mr. Thornton.

FOREIGN OFFICE, *June* 10, 1869.

SIR: On the day of Mr. Motley's arrival in London, on the 31st of May, he requested to see me unofficially at my private residence. At the interview which took place on the following day, the conversation was general, and Mr. Motley said that he preferred not to enter upon matters of business, as his instructions had only been delivered to him when he was on the point of embarkation at New York, and he had not yet had time sufficiently to consider them.

I assented, of course, to the postponement desired by Mr. Motley. His tone was very friendly, and we met as old acquaintances.

Mr. Motley called upon me this morning by appointment, and said that as he had now been in London some days, his Government would be desirous to hear from him, and he wished therefore to make known to me the general tenor of his instructions, which were of a most amicable character, and he had no hesitation in assuring me that the wish of the President and Government of the United States was that existing differences between the two countries should be honorably settled, and that the international relations should be placed on a firm and satisfactory basis.

I assured Mr. Motley of the perfect reciprocity of feeling that existed on the part of Her Majesty's government.

Mr. Motley then proceeded to say that he was empowered to conclude a treaty on the naturalization question upon the principle recorded in the protocol signed by Lord Stanley and Mr. Reverdy Johnson, and I expressed my fear that some delay must take place in this matter, not from any unwillingness on the part of Her Majesty's government to settle the question, but from the great pressure of business now before Parliament, which would make it almost impossible to pass a bill in the course of the present session which affected such various interests, and was certain to lead to protracted discussion. The delay, however, was not likely, I thought, to be of such importance to the Government of the United States, as their main object, viz, the renunciation of our old doctrine of indefeasible allegiance, had been achieved by the protocol, with the general approbation, to the best of my belief, of the British public.

Mr. Motley said that in the recent short session of the Senate there had not been time to take action on the San Juan convention, and that its consideration had been postponed without any objection to it having been raised.

The claims convention, Mr. Motley said, had been published prematurely owing to some accident which he could not explain, and that consequently long before it came under the notice of the Senate it had been unfavorably received by all classes and parties in the United States.

The time at which it was signed was thought most inopportune, as the late President and his Government were virtually out of office, and their successors could not be consulted on this grave question. The convention was further objected to because it embraced only the claims of individuals, and had no reference to those of the two governments on each other; and lastly, that it settled no question and laid down no principle.

These were the chief reasons which had led to its rejection by the Senate, and Mr. Motley added that although they had not been at once and explicitly stated, no discourtesy to Her Majesty's government was thereby intended. Mr. Motley then proceeded to say that in the present state of excitement which existed in both countries, his Government was of opinion that to re-open the question would be inexpedient,
[2] as it *could not be approached with the calm deliberation which was essential to its satisfactory solution, and he wished therefore to defer discussion on the subject.

I said that Her Majesty's government would have no difficulty in complying with the wishes of the United States Government in this respect, though I did not consider that the excitement to which he had alluded was great in this country; but I thought it would be very objectionable indefinitely to postpone a settlement, and to treat the matter as a quarrel held in suspension, to be revived only when circumstances might make it the interest of either party to do so.

Mr. Motley assured me that I need be under no such apprehension, as his Government merely desired, for the reasons he had just stated, that a definite time should be allowed for angry feelings to subside. Mr. Motley laid great stress upon the opportunity that would be afforded to two great maritime nations like England and the United States to lay down some general principles of international law, particularly with reference to the rights and duties of neutrals in war, that might be of advantage to the civilized world.

I said I could give no better proof of the readiness of Her Majesty's government to meet that of the Uited States on this ground than the fact that I had myself made a somewhat similar proposal to Mr. Adams (as might be seen in the papers laid before Parliament,) who, however, had shown no disposition to entertain it.

Mr. Motley said that his Government did not question the right of England or any other country to confer belligerent rights, but that the government which acted in that manner must do so at its own risk and responsibility; and upon his proceeding to make some further remarks on the subject, I took the liberty of observing that, although I was quite prepared to defend the conduct of Her Majesty's government, and the complete and honest neutrality it had observed throughout the war, yet if discussion was not to take place at present, I thought it desirable not to enter upon such matters.

Mr. Motley, in a friendly manner, agreed that it would be the better course. Mr. Motley entered at some length upon the responsibility weighing upon men who were charged with the maintenance of friendly relations between Great Britain and the United States, and said he did not disguise from himself the difficulty of replacing them on a sound and equitable footing, as, in regulating international affairs, passions and sentiments must be taken into consideration, and intense feel-

ing with regard to the questions at issue between the two countries existed in the United States.

I assured Mr. Motley that my earnest desire, as representing Her Majesty's government, would be to co-operate with him in effecting a settlement of existing differences in a manner honorable to both countries, and he must be well aware that war with the United States would be abhorrent to the feelings of the English people.

I am, &c.,
(Signed) CLARENDON.

No. 2.

The Earl of Clarendon to Mr. Motley.

FOREIGN OFFICE, *October* 15, 1869.

SIR: As I am apprehensive that, in reporting from memory to my colleagues, I might not do justice to the long and important dispatch which you read to me this afternoon, I should be much obliged to you if you would have the goodness to furnish me with a copy of it.

I have, &c.,
(Signed) CLARENDON.

No. 3.

Mr. Motley to the Earl of Clarendon.

LEGATION OF THE UNITED STATES,
London, October 16, 1869. (Received October 18.)

MY LORD: I have the honor to transmit herewith, in compliance with the request contained in your note of the 15th instant, a copy of the dispatch from the Secretary of State of the United States, which I read to your lordship yesterday.

Renewing, &c.,
(Signed) JOHN LOTHROP MOTLEY.

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[3] [Inclosure in No. 3.]

Mr. Fish to Mr. Motley.

DEPARTMENT OF STATE,
Washington, September 25, 1869.

SIR: When you left here upon your mission the moment was thought not to be the most hopeful to enter upon renewed discussion or negotiation with the government of Great Britain on the subject of the claims of this Government against that of Her Majesty, and you were instructed to convey to Lord Clarendon the opinion of the President that a suspension of the discussion for a short period might allow the subsidence of any excitement or irritation growing out of events then recent, and might enable the two governments to approach more readily to a solution of their differences.

You have informed me that Lord Clarendon saw no objection to this course, and agreed with you that it would be well to give time for emotions which had been excited of late, to subside. The President is inclined to believe that sufficient time may have now elapsed to allow subsidence of those emotions, and that thus it may be opportune and convenient at the present conjuncture to place in your hands, for appropriate use, a dispassionate exposition of the just causes of complaint of the Government of the United States against that of Great Britain.

In order to do this in a satisfactory manner, it is necessary to go back to the very beginning of the acts and events which have, in their progress and consummation, so much disturbed the otherwise amicable relations of the two governments.

When, in the winter of 1860 and 1861, certain States of the American Union undertook, by ordinances of secession, to separate themselves from the others, and to constitute of their own volition, and by force, a new and independent republic under the name of the Confederate States of America, there existed, as between Great Britain and the United States, a condition of profound peace; their political relations were professedly and apparently of the most friendly character, and their commercial and financial relations were as close and intimate, in fact, as they seemed to be cordial in spirit, such as became the two great liberal, progressive, and maritime and commercial powers of the world, associated as they were by strong ties of common interest, language, and tradition.

The Government of the United States had no reason to presume that the amicable sentiments of the British government would be diminished or otherwise prejudicially affected by the occurrence of domestic insurrection within the United States, any more than those of the latter had been impaired by the occurrence of insurrection in British India, or might be impaired by such occurrences elsewhere in the dominions of Great Britain.

Least of all could the Government of the United States anticipate hostility towards it, and special friendship for the insurgents of the seceding States, in view of the inducements and objects of that insurrection, which avowedly, and as every statesman, whether in Europe or America, well knew, and as the very earliest mention of the insurrection in the House of Commons indicated, were the secure establishment of a perpetual and exclusive slaveholding republic. In such a contest, the Government of the United States was entitled to expect the earnest good will, sympathy, and moral support of Great Britain.

It was with painful astonishment, therefore, that the United States Government received information of the decision of Her Majesty's government which had already been made on the 6th day of May, 1861, and was announced on that day in the House of Commons by her ministry, and was followed by the issue, on the 13th of May, 1861, of a proclamation which in effect recognized the insurgents as a belligerent power, and raised them to the same level of neutral right with the United States.

The President does not deny, on the contrary he maintains, that every sovereign power decides for itself, on its responsibility, the question whether or not it will at a given time accord the *status* of belligerency to the insurgent subjects of another power, as also the larger question of the independence of such subjects, and their accession to the family of sovereign states.

But the rightfulness of such an act depends on the occasion and the circumstances; and it is an act, like the sovereign act of war, which the morality of the public law and practice requires should be deliberate, seasonable, and just, in reference to surrounding facts; national belligerency, indeed, like national independence, being but an existing fact, officially recognized as such, without which such a declaration is only the indirect manifestation of a particular line of policy.

The precipitancy of the declaration of the Queen's government, or, as Mr. Bright characterized it, "the remarkable celerity, undue and unfriendly haste," with
[4] which it was *made, appears in its having been determined on the 6th of May, four days prior to the arrival in London of any official knowledge of the President's proclamation of the 19th of April, 1861, by reference to which the Queen's proclamation has since been defended, and that it was actually signed on the 13th of May, the very day of the arrival of Mr. Adams, the new American minister; as if in the particular aim of forestalling and preventing explanations on the part of the United States.

The prematureness of the measure is further shown by the very tenor of the proclamation, which sets forth its own reason, namely, "Whereas hostilities have unhappily commenced between the Government of the United States of America and certain States styling themselves the Confederate States of America." Moreover, it is not pretended by the proclamation that war exists, but only a "contest," in reference to which it is not unimportant to note that the language used is such as would fitly apply to parties wholly independent one of the other, so as thus to negative, or to suppress at least, the critical circumstance that this bare commencement of hostilities, this incipient contest, was a mere domestic act of insurrection within the United States.

But that which conclusively shows the unseasonable precipitancy of the measure is the fact that on that day, May 13, 1861, and indeed until long afterwards, not a battle had been fought between the insurgents and the United States, nor a combat even, save the solitary and isolated attack on Fort Sumter. Did such a bare commencement of hostilities constitute belligerency? Plainly not.

There was at that time no such thing as a population elevated into force, and by the prosecution of war, which Mr. Canning points out as the test of belligerent condition. The assumed belligerency of the insurgents was a fiction—a war on paper only, not in

the field—like a paper blockade, the anticipation of supposed belligerency to come, but which might never have come if not thus anticipated and encouraged by the Queen's government.

Indeed, as forcibly put by Mr. Adams, the Queen's declaration had the effect of creating posterior belligerency, instead of merely acknowledging an actual fact; and that belligerency, so far as it was maritime, proceeding from the ports of Great Britain and her dependencies alone, with aid and co-operation of subjects of Great Britain.

The Government of the United States, that of Great Britain, and other European powers, had repeatedly had occasion to consider this question in all its bearings.

It was perceived that the recognition of belligerency on the part of insurgents, although not so serious an act as the recognition of independence, yet might well be prejudicial to the legitimate government, and therefore be regarded by it as an act of unfriendliness. It was a step, therefore, to be taken with thoughtfulness, and with due regard to exigent circumstances. Governments had waited months, sometimes years, in the face of actual hostilities without taking this step.

But circumstances might arise to call for it. A ship of the insurgents might appear in the port of the neutral, or a collision might occur at sea, imposing on the neutral the necessity to act. Or actual hostilities might have continued to rage in the theater of insurgent war; combat after combat might have been fought for such a period of time; a mass of men may have engaged in actual war until they should have acquired the consistency of military power—to repeat the idea of Mr. Canning—so as evidently to constitute the fact of belligerency, and to justify the recognition by the neutral. Or, the nearness of the seat of hostilities to the neutral may compel the latter to act. In either of these contingencies, the neutral would have a right to act; it might be his sovereign duty to act, however inconvenient such action should be to the legitimate government.

There was no such fact of necessity, no such fact of continued and flagrant hostilities, to justify the action of Great Britain in the present case. Hence the United States felt constrained at the time to regard this proclamation as the sign of a purpose of unfriendliness to them, and of friendliness to the insurgents, which purpose could not fail to aggravate all the evils of the pending contest, to strengthen the insurgents, and to embarrass the legitimate government. And so it proved; for as time went on, as the insurrection from political came at length to be military, as the sectional controversy in the United States proceeded to exhibit itself in the organization of great armies and fleets, and in the prosecution of hostilities on a scale of gigantic magnitude, then it was that the spirit of the Queen's proclamation showed itself in the event, seeing that, in virtue of the proclamation, maritime enterprises in the ports of Great Britain, which would otherwise have been piratical, were rendered lawful, and thus Great Britain became, and to the end continued to be, the arsenal, the navy-yard, and the treasury of the insurgent confederacy.

A spectacle was thus presented without precedent or parallel in the history of
[5] *civilized nations. Great Britain, although the professed friend of the United States, yet, in time of avowed international peace, permitted armed cruisers to be fitted out and harbored and equipped in her ports, to cruise against the merchant-ships of the United States, and to burn and destroy them, until our maritime commerce was swept from the ocean. Our merchant-vessels were destroyed piratically by captors who had no ports of their own in which to refit or to condemn prize, and whose only nationality was the quarter-deck of their ships, built, dispatched to sea, and not seldom in name still professedly owned in Great Britain. Earl Russell truly said, "It so happens that in this conflict the confederates have no ports except those of the Mersey and the Clyde, from which they send out ships to cruise against the Federals." The number of our ships thus directly destroyed amounts to nearly two hundred, and the value of property destroyed to many millions. Indirectly the effect was to increase the rate of insurance in the United States, to diminish exports and imports, and otherwise obstruct domestic industry and production, and to take away from the United States its immense foreign commerce, and to transfer this to the merchant-vessels of Great Britain. So that while in the year 1860 the foreign merchant tonnage of the United States amounted to 2,546,237 tons, in 1866 it had sunk to 1,492,923 tons. This depreciation is represented by a corresponding increase in the tonnage of Great Britain during the same period to the amount of 1,120,650 tons. And the amount of commerce abstracted from the United States and transferred to Great Britain during the same period is in still greater proportion. Thus, in effect, war against the United States was carried on from the ports of Great Britain by British subjects in the name of the confederates. Mr. Cobden, in the House of Commons, characterized by these very words the acts permitted or suffered by the British government: "You have been carrying on war from these shores against the United States," he said, "and have been inflicting an amount of damage on that country greater than would have been produced by many ordinary wars."

The gravity of these facts may be appreciated by considering what had happened at other periods. In the latter period of the war of the French Revolution, Great Britain

was compelled to strain every nerve to maintain herself against the power of Napoleon In such straits, by a sort of war in disguise, she trespassed on the rights of neutrals, with special prejudice of the United States, to the result at length of solemn war between the two nations. But neither in the events which preceded that war, nor in the events of the war itself, did the United States suffer more at the hands of Great Britain than we did during the late rebellion, by the aid, direct or indirect, which she afforded to the confederated insurgent States. For while, on the ocean, our merchant marine was destroyed by cruisers sent out from Great Britain, and our military marine was mainly occupied in watching and counterworking blockade-runners fitted out in Great Britain by official agents of the insurgents, on the land it was, in like manner, the munitions of war and the wealth drawn by the insurgents from Great Britain which enabled them to withstand, year after year, the arms of the United States.

In the midst of all this, remonstrances of the Government of the United States were prompt, earnest, and persistent. Our minister in London appealed to the international amity of the British government; he called on it to discharge its obligations of neutrality, he invoked the aid of the municipal law of Great Britain.

Ample proofs of the wrong committed were submitted to the Queen's government. Indeed, these wrongs were open, notorious, perpetrated in the face of day, the subject of debate, and of boast even, in the House of Commons.

The Queen's ministers excused themselves by alleged defects in the municipal law of the country. Learned counsel either advised that the wrongs committed did not constitute violations of the municipal law, or else gave sanction to artful devices of deceit to cover up such violations of law. And, strange to say, the courts of England or of Scotland up to the very highest were occupied month after month with judicial niceties and technicalities of statute construction, in this respect, while the Queen's government itself, including the omnipotent Parliament, which might have settled these questions in an hour by appropriate legislation, sat with folded arms as if unmindful of its international obligations, and suffered ship after ship to be constructed in its ports to wage war on the United States.

We hold that the international duty of the Queen's government in this respect was above and independent of the municipal laws of England. It was a sovereign duty attaching to Great Britain as a sovereign power. The municipal law was but a means of repressing or punishing individual wrong-doers; the law of nations was the true and proper rule of duty for the government. If the municipal laws were defective, that was a domestic inconvenience, of concern only to the local government, and for it to remedy or not by suitable legislation, as it pleased. But no sovereign
[6] power can rightfully plead the *defects of its own domestic penal statutes as justification or extenuation of an international wrong done to another sovereign power.

When the defects of the existing laws of Parliament had become apparent, the Government of the United States earnestly entreated the Queen's ministers to provide the required remedy, as it would have been easy to do by a proper act of Parliament; but this the Queen's government refused.

The United States, at an early day in their history, had set the example of repressing violations of neutrality to the prejudice of Great Britain, by their own authority, and in the discharge of their own national duty, without waiting for the assistance of municipal statute. They afterward enacted such statutes for their own convenience, and as attestation of their good faith toward other nations. And on special occasions, where defects were perceived in such laws, we enacted new ones to meet the case, not deeming that such legislation was derogatory to our public dignity, but, on the contrary, conceiving that in so doing we best consulted the highest dictates of national dignity, self-respect, and public honor; and, if Great Britain had so understood her national duty on this occasion, she would have done much to save the two countries from the present controversy, and all its possible consequences.

Once before in its intercourse with the United States the Queen's government had fallen into the error of assuming that municipal laws constitute the measure of international rights and obligations; that is to say, when official agents of the British government attempted to enlist military recruits in the neutral countries of Prussia, the United States, and elsewhere, for service against Russia, on the hypothesis that, if the prohibitions of municipal law could be evaded, that would suffice, overlooking the paramount consideration of the respect due to the sovereign rights of the neutral power.

So on the present occasion the Queen's ministers seem to have committed the error of assuming that they needed not to look beyond their own local law, enacted for their own domestic convenience, and might, under cover of the deficiencies of that law, disregard their sovereign duties toward another sovereign power.

Nor was it, in our judgment, any adequate excuse for the Queen's ministers to profess extreme tenderness of private rights, or apprehension of actions for damages, case of any attempt to arrest the many ships which, either in England or Scot-

land, were, with ostentatious publicity, being constructed to cruise against the United States.

Surely that was an imaginary difficulty; or, if a real one, it presented the election between a serious complication of relations between the United States and the hazard of a legal conflict with John Laird and Charles Kuh Prioleau.

But the Government of the United States has never been able to see the force of this alleged difficulty. The common law of England is the common law of the United States. In both countries, and certainly in England, revenue seizures are made daily, and ships prevented from going to sea, on much less cause of suspicion than attached to the suspected ships of the confederates.

In both countries, and not least in England, the previous order of the government, or its subsequent approval, covers the acts of the subordinate officers. In both countries, or if not in England assuredly in the United States, under municipal laws in this behalf substantially the same, the Government finds no difficulty in arresting ships charged with actual or intended violation of the sovereign rights or neutral duties of the States.

Signal examples of this occur in the history of the United States. Thus, during the late war between Great Britain and Russia, on complaints with affidavits being filed by the British consul at New York, charging that the bark Maury was being equipped there as a belligerent cruiser, and this on far less evidence than that which the American consul at Liverpool exhibited against the Alabama, the bark Maury was arrested within an hour by telegraphic order from Washington. Other examples of the same decision and promptitude, in maintenance of the sovereign rights and discharge of the neutral duties of the United States, have occurred, as is well known, under both the last and the present administrations.

Nay, at every period of our history the Government of the United States has not been content with preventing the departure of ships fitted out in violation of neutrality, and of putting a stop to military recruitments and expeditions of the same nature, but has further manifested its good faith and its respect for its own sovereignty and laws by prosecuting criminally the guilty parties. Examples of this occur in the early stages of the war of the French Revolution; on occasion of the insurrection of the Spanish-American continental provinces; and of revolutionary movements in the Spanish-American republics; and on various other occasions, including the existing insurrection in Cuba.

But although such acts of violation of law were frequent in Great Britain, and
[7] *susceptible of complete technical proof, notorious, flaunted directly in the face of the world, varnished over, if at all, with the shallowest pretexts of deception, yet no efficient step appears to have been taken by the British government to enforce the execution of its municipal laws or to vindicate the majesty of its outraged sovereign power.

And the Government of the United States cannot believe it would conceive itself wanting in respect for Great Britain to impute that the Queen's ministers are so much hampered by judicial difficulties that the local administration is thus reduced to such a state of legal impotency as to deprive the government of capacity to uphold its sovereignty against local wrong-doers, or its neutrality as regards other sovereign powers.

If, indeed, it were so, the causes of reclamation on the part of the United States would only be the more positive and sure; for the law of nations assumes that each government is capable of discharging its international obligations, and, perchance, if it be not, then the absence of such capability is itself a specific ground of responsibility for consequences.

But the Queen's government would not be content to admit, nor will the Government of the United States presume to impute to it, such political organization of the British empire as to imply any want of legal ability on its part to discharge in the amplest manner all its duties of sovereignty and amity toward other powers.

It remains only in this relation to refer to one other point, namely, the question of negligence—neglect on the part of officers of the British government, whether superior or subordinate, to detain confederate cruisers, and especially the Alabama, the most successful of the depredators on the commerce of the United States.

On this point the President conceives that little need now to be said, for various cogent reasons. First, the matter has been exhaustively discussed already by this Department or by the successive American ministers. Then, if the question of negligence be discussed with frankness, it must be treated in this instance as a case of extreme negligence, which Sir William Jones has taught us to regard as equivalent or approximate to evil intention. The question of negligence, therefore, cannot be presented without danger of thought or language disrespectful toward the Queen's ministers; and the President, while purposing, of course, as his sense of duty requires, to sustain the rights of the United States in all their utmost amplitude, yet intends to speak and act in relation to Great Britain in the same spirit of international respect which he expects of her in relation to the United States; and he is sincerely desirous that all discussions between the governments may be so conducted as not only to prevent any

aggravation of existing differences, but to tend to such reasonable and amicable determination as best becomes two great nations of common origin and conscious dignity and strength.

I assume, therefore, pretermitting detailed discussion in this respect, that the negligence of the officers of the British government, in the matter of the Alabama at least, was gross and inexcusable, and such as indisputably to devolve on that government full responsibility for all the depredations committed by her. Indeed, this conclusion seems, in effect, to be conceded in Great Britain. At all events, the United States conceive that the proofs of responsible negligence in this matter are so clear that no room remains for debate on that point; and it should be taken for granted in all future negotiations with Great Britain.

It is impossible not to compare and contrast the conduct of the States-General as regards Great Britain on occasion of the revolt of the British colonies with that of Great Britain as regards the insurrection in the Southern States. No fleets were fitted out by America in the ports of the Netherlands to prey on the commerce of Great Britain. Only in a single instance did American cruisers have temporary harborage in the Texel. Year after year the exports of munitions of war from the Netherlands were forbidden by the States-General, the more completely to fulfill their duty of amity and neutrality toward Great Britain. But nevertheless Great Britain treated a declaration of neutrality by the States-General, and the observance of that declaration, as a sufficient cause of war against the Netherlands. Prior to which the British government continually complained of the occasional supplies derived by the colonies from the island of St. Eustatius. How light in this respect would have been the burdens of the United States during the late insurrection if British aid had been confined to a contraband commerce between the insurgents and the port of Nassau.

Not such is the complaint of the United States against Great Britain.

We complain that the insurrection in the Southern States, if it did not exist, was continued, and obtained its enduring vitality, by means of the resources it drew from Great Britain. We complain that by reason of the imperfect discharge of its neutral duties on the part of the Queen's government Great Britain became the military, naval, and financial basis of insurgent warfare against the United States. We complain of the destruction of our merchant marine by British ships, manned by British seamen, armed *with British guns, dispatched from British dock-yards, sheltered and harbored in British ports. We complain that, by reason of the policy and the acts of the Queen's ministers, injury incalculable was inflicted on the United States.

[8]

Nevertheless the United States manfully and resolvedly encountered all the great perils and difficulties of the situation, foreign and domestic, and overcame them. We endured with proud patience the manifestation of hostility there, where we had expected friendship, in England, the protagonist of the abolition of negro servitude, in order to perpetuate which the Southern States had seceded from the Union. We entered on a great war, involving sea and land; we marched to the field hundreds of thousands of soldiers, and expended thousands of millions of treasure for their support; we lavished the blood of our bravest and best in battle as if it were but water; we submitted to all privations without a murmur; we staked our lives, our fortunes, and our honor on the issue of the combat; and by the blessing of God we came out of the deadly struggle victorious, and with courage proved, strength unimpaired, power augmented, and our place fixed among the nations, second to none, we may without presumption say, in the civilized world. Providence had smiled on our sacrifices and our exertions; and in the hour of our supreme triumph we felt that, while mindful of good wil[illegible]nown us by friendly powers in the hour of trial, we could afford to account in moderation with others which, like Great Britain, had, as we thought, speculated improvidently and to their own discomfiture on the expected dismemberment and downfall of the great American Republic.

As to Great Britain, we had special and peculiar causes of grief. She had prematurely, as we deemed it, and without adequate reason, awarded the *status* of belligerency to our insurgents. But this act of itself and by its inherent nature was of neutral color, and an act which, however we might condemn it in the particular case, we could not deny to be of the competency of a sovereign state. Other European governments also recognized the belligerency of the insurgents. But Great Britain alone had translated a measure, indefinite of itself, into one of definite wrong to the United States, as evinced by the constant and efficient aid in ships and munitions of war which she furnished the confederates, and in the permission or negligence which enabled confederate cruisers from her ports to prey on the commerce of the United States. Great Britain alone had founded on that recognition a systematic maritime war against the United States; and this to effect the establishment of a slave government! As to which Mr. Bright might well say, "We supply the ships; we supply the arms, the munitions of war; we give aid and comfort to the foulest of crimes; Englishmen only do it." Thus what in France, in Spain, as their subsequent

conduct showed, had been but an untimely and ill-judged act of political manifestation, had in England, as her subsequent conduct showed, been a virtual act of war.

We reflected that the confederates had no ships, no means of building ships, no mechanical appliances, no marine, no legal *status* on the sea, no open sea-ports, no possible courts of prize, no domestic command of the instruments and agencies of modern maritime warfare; we asked ourselves, what would the Queen's government have said if the United States had awarded the rights of belligerency to insurgents in India or in Ireland in the same circumstances, that is, on the occurrence of a single act of rebel hostility, and had bestowed upon them their only means of maritime as well as territorial warfare against Great Britain?

In truth, while in the hour of their great triumph the United States were thankfully inclined to sentiments of moderation, both at home and abroad—for at home no man has suffered death for political causes—we were the more inclined to moderation, especially as regards Great Britain, in view of the very enormity of the wrongs we had sustained, and the consequent difficulty of measuring the reparation due, even if sincerely proffered by the Queen's government. We desired no war with England; we shrank from the thought of another lustrum of fratricidal carnage like that through which we had just passed, with no change in the conditions of war, but the substitution on one side of misguided Englishmen in the place of misguided Americans. We preferred, if possible, to find some satisfaction of our great grievances by peaceful means, consistent alike with the honor of Great Britain and the United States.

The influence of this condition of mind is apparent in all the discussions of the subject by or under the instructions of this Department during preceding administrations of the Government.

It resulted in earnest efforts on our part to determine the controversy by arbitration in the interest of peace and of international good will, which efforts, if promptly met by the Queen's ministers in the spirit in which they were made, would long since have removed the present controversy from the field of diplomacy and effectually harmonized the relations of the United States with Great Britain.

[9] *But the amicable advances of the United States to dispose of the question by arbitration were, at the start, and persistently long afterward, met by Earl Russell in the name of the Queen's government with subtleties of reservation and exception, the effect of which would have been, instead of closing up the controversy, to leave us in a condition worse than before, and more perilous to the cause of peace.

The Government of the United States has never been able to appreciate the force of the reasons alleged in support of such reservations and exceptions. When one power demands of another the redress of alleged wrongs, and the latter entertains the idea of arbitration as the means of settling the question, it seems irrational to insist that the arbitration shall be a qualified and a limited one, through apprehensions lest, peradventure, there might be implication that such wrongs had been committed by intention, and that such implication would be injurious to the honor of the wrong-doing government. On these premises, arbitration may be the means of adjusting immaterial international wrongs, but not the material ones; that is to say, if the grievances be serious, the two nations must of necessity go to war, while neither desires it, which would be an absurd conclusion.

Lord Stanley and Lord Clarendon appear to have seen this, and, therefore, to have regarded the particular question with more correct estimation of its incidents than Lord Russell, and thereupon to have admitted as theory, comprehensive arbitration concerning all questions between the governments.

But the convention which, in this view, was negotiated by the Earl of Clarendon and Mr. Reverdy Johnson, did not prove satisfactory to the Senate of the United States.

It is well known to the government of Great Britain that the President and the Senate of the United States are distinct powers of the Government, associated in the conclusion of treaties and in the appointment of public officers, but not dependent one on the other, nor of necessity entertaining the same opinion on public questions. Each acts on appropriate convictions of duty and of right; and the Senate has the same absolute power to reject a treaty as the President has to negotiate one.

Of course it is not necessarily incumbent on the President to express approval or disapproval of an act of the Senate.

But the President deems it due to the Senate, to himself, and to the subject, to declare that he concurs with the Senate in disapproving of that convention. His own particular reasons for this conclusion are sufficiently apparent in this dispatch. In addition to these general reasons he thinks the provisions of the convention were inadequate to provide reparation for the United States in the manner and to the degree to which he considers the United States entitled to redress. Other and special reasons for the same conclusion have been explained in a previous dispatch, such, namely, as the time and circumstances of the negotiation, the complex character of the proposed arbitration, its chance, agency, and results, and its failure to determine any principle, or otherwise to fix on a stable foundation the relations of the two governments. The

President is not yet prepared to pronounce on the question of the indemnities which he thinks due by Great Britain to individual citizens of the United States for the destruction of their property by rebel cruisers fitted out in the ports of Great Britain.

Nor is he now prepared to speak of the reparation which he thinks due by the British government for the larger account of the vast national injuries it has inflicted on the United States.

Nor does he attempt now to measure the relative effect of the various causes of injury, as whether by untimely recognition of belligerency, by suffering the fitting out of rebel cruisers, or by the supply of ships, arms, and munitions of war to the confederates, or otherwise, in whatsoever manner.

Nor does it fall within the scope of this dispatch to discuss the important changes in the rules of public law, the desirableness of which has been demonstrated by the incidents of the last few years now under consideration; and which, in view of the maritime prominence of Great Britain and the United States, it would befit them to mature and propose to the other states of Christendom.

All these are subjects of future consideration which, when the time for action shall come, the President will consider with sincere and earnest desire that all differences between the two nations may be adjusted amicably and compatibly with the honor of each, and to the promotion of future concord between them; to which end he will spare no efforts within the range of his supreme duty to the right and interests of the United States.

At the present stage of the controversy, the sole object of the President is to state the position and maintain the attitude of the United States in the various relations and aspects of this grave controversy with Great Britain. It is the object of this paper (which you are at liberty to read to Lord Clarendon) to state calmly and dispassionately, with a more unreserved freedom than might be used in one addressed
[10] directly to the Queen's government," what this Government seriously considers the injuries it has suffered. It is not written in the nature of a claim, for the United States now make no demand against Her Majesty's government on account of the injuries they feel they have sustained.

Although the United States are anxious for a settlement, on a liberal and comprehensive basis, of all the questions which now interfere with the entirely cordial relations which they desire to exist between the two governments, they do not now propose or desire to set any time for this settlement. On the contrary, they prefer to leave that question, and also the more important question of the means and method of removing the causes of complaint, of restoring the much desired relations of perfect cordiality, and the preventing of the probability of like questions in the future, to consideration of Her Majesty's government. They will, however, be ready, whenever Her Majesty's government shall think the proper time has come for a renewed negotiation, to entertain any proposition which that government shall think proper to present, and to apply to such propositions their earnest and sincere wishes and endeavors for a solution, honorable and satisfactory to both countries.

I am, &c.,
(Signed) HAMILTON FISH.

No. 4.

Mr. Motley to the Earl of Clarendon.

LEGATION OF THE UNITED STATES,
London, October 23, 1869. (Received October —.)

MY LORD: In reference to the conversation which I had with your lordship on the 10th of June last, and to the dispatch from the United States Secretary of State which I had the honor to read to you on the 15th instant, it may have possibly appeared that there was some inconsistency between the views of the President upon the subjects of the recognition of the late insurgents in the Southern States as belligerents, and the destruction of American commerce by cruisers of British origin carrying the insurgent flag, as verbally expressed by me at the interview in June, and those views as set forth in the above-mentioned dispatch. I think it necessary to inform your lordship, therefore, that the Secretary of State, on reception of my dispatch recounting the substance of the conversation in June, observed to me in a dispatch of the 29th of June,

that it did not seem that the President's view of the right of every power, when a civil conflict has arisen within another state, to define its own relations and those of its citizens, had been conveyed in precise conformity to that view, as the Secretary of State desired to present it to me, and as it is doubtless would have been conveyed by me had my communication been made in writing.

I would, therefore, request your lordship to consider the dispatch of the United States Secretary of State, which I read to you on the 15th instant, and a copy of which I have had the honor of sending to your lordship, as containing the exact and authoritative statement of the President's views on this subject, as laid down in all the instructions given under his directions by the Secretary of State.

I pray, &c.,
(Signed) JOHN LOTHROP MOTLEY.

No. 5.

The Earl of Clarendon to Mr. Motley.

FOREIGN OFFICE, *November* 5, 1869.

SIR: I have the honor to acknowledge the receipt of your letter of the 23d ultimo, requesting that the dispatch from the United States Secretary of State, which you read to me on the 15th ultimo, and of which you have been good enough to furnish me with a copy, should be considered as containing the exact and authoritative statement of the President's views, as laid down in the instructions given under his direction on the subjects to which it relates, and I have to state to you that your communication shall receive due attention.

I have at the same time to express to you my regret at the delay which has occurred in acknowledging the receipt of your letter.

I am, &c.,
(Signed) CLARENDON.

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[11] *No. 6.

The Earl of Clarendon to Mr. Thornton.

FOREIGN OFFICE, *November* 6, 1869.

SIR: Mr. Motley called upon me at the foreign office on Friday, the 15th of October, and read to me a dispatch from Mr. Fish, on the Alabama claims.

When he had concluded I said that, although I had not interposed any observations, and should not then, in compliance with the wish he had expressed, enter into any discussion on the subject, yet I hoped that my silence would not be considered to indicate that the dispatch did not admit of a complete reply. I requested that he would have the goodness to give me a copy of the dispatch, as I could not undertake from memory accurately to report to my colleagues the contents of the long and important document he had just rapidly read to me.

Mr. Motley agreed to do so if I would ask him for it officially, and I accordingly addressed to him the same afternoon the letter of which I

inclose a copy, and received from him on the afternoon of the 18th a copy of Mr. Fish's dispatch, of which I now also inclose to you a copy.

This dispatch, as you will see, recapitulates at great length the causes of dissatisfaction which the Government of the United States considers itself entitled to feel with the conduct of the British government during the late civil war; but it does not make any proposition as to the manner in which that dissatisfaction may be removed, or offer any solution of the difficulty.

On the contrary, Mr. Fish distinctly says that the President is not yet prepared to pronounce on the question of the indemnities which he thinks due by Great Britain to individual citizens of the United States for the destruction of their property by rebel cruisers fitted out in the ports of Great Britain; neither is he prepared to speak of the reparation which he thinks due by the British government for the larger account of the vast national injuries it has inflicted on the United States; neither does he attempt now to measure the relative causes of injury, as whether by untimely recognition of belligerency, by suffering of the fitting out of rebel cruisers, or by the supply of ships, arms, and munitions of war to the confederates, or otherwise; neither does it fall within the scope of his dispatch to discuss the important changes in the rule of public law, the desirableness of which has been demonstrated by the incidents of the last few years now under consideration, and which, in view of the maritime prominence of Great Britain and the United States, it would benefit them to mature and propose to the other states of Christendom.

All these subjects the President, Mr. Fish says, will be prepared to consider hereafter with a sincere and earnest desire that all differences between the two nations may be adjusted amicably and compatibly with the honor of each, and to the promotion of future concord between them; to which end he will spare no efforts within the range of his supreme duty to the right and interest of the United States.

The object of his dispatch, Mr. Fish goes on to say, is to state calmly and dispassionately what the Government of the United States seriously consider to be the injuries which it has suffered; it is not written in the nature of a claim, for the United States now make no demand against Her Majesty's government on account of the injuries they feel they have sustained. Although the United States are anxious for a settlement on a liberal and comprehensive basis of all the questions which now interfere with the entirely cordial relations which they desire should exist between the two governments, yet they do not now propose or desire to fix any time for this settlement. They prefer to leave that and the more important question of the means and method of removing the causes of complaint, of restoring the much-desired relations of perfect cordiality, and the prevention of the probability of like questions in future, to the consideration of Her Majesty's government; but they will be ready, whenever Her Majesty's government shall think the proper time has come for a renewed negotiation, to entertain any propositions which that government shall think proper to present, and to apply to such propositions their earnest and sincere wishes and endeavors for a solution honorable and satisfactory to both countries.

I have recited at length the concluding passages of Mr. Fish's dispatch, because they express many sentiments which Her Majesty's government most cordially and sincerely reciprocate. The government of Her Majesty, equally with the Government of the United States, earnestly desire that all differences between the two nations may be adjusted amicably and compatibly with the honor of each, and that all causes of future difference between them may be prevented; and they would heartily co-oper-

ate with the Government of the United States in laying down as between themselves, and in recommending for adoption by other maritime nations, such principles of maritime law as might obviate the recurrence of similar causes of difference between them.

[12] *And it is because they earnestly desire to hasten the period at which these important objects may be accomplished that Her Majesty's government have determined not to follow Mr. Fish through the long recapitulation of the various points which have been discussed in the voluminous correspondence that has taken place between the two governments for several years.

Her Majesty's government had indeed hoped that by the convention which, under the instructions of his Government, and with their full and deliberate concurrence, Mr. Reverdy Johnson signed with me, on the 14th of January of the present year, all correspondence between the two governments had been brought to an end, and that all matters in dispute would be referred for settlement to a dispassionate tribunal. With a view to that result Her Majesty's government had in some degree departed from their deliberate convictions and declared resolves; they agreed to the mode of settlement proposed by the United States Government, which was more than once in the course of that negotiation modified to meet the wishes of that Government; but they did so willingly, because they thought the restoration of a good understanding between Great Britain and the United States might well be purchased by concessions kept within bounds, and not inconsistent with the honor of this country.

Her Majesty's government learned with deep concern that the Senate of the United States, in the exercise of the powers unquestionably conferred upon it by the Constitution, repudiated the acts of the Government under whose authority that convention was concluded, and by rejecting it had left open the whole controversy between the two countries, and had indefinitely prolonged the uncertainty attendant on such a state of things.

Her Majesty's government regret no less sincerely that the President of the United States concurs with the Senate in disapproving that treaty; but their regret would in some degree be diminished if Mr. Fish had been authorized to indicate some other means of adjusting the questions between the two countries, which, as long as they remain open, cannot be favorable to a cordial and good understanding between them. This, however, Mr. Fish has not been empowered to do, but he expresses the readiness of the President to consider any proposal emanating from this country. It is obvious, however, and Mr. Fish will probably on reflection admit, that Her Majesty's government cannot make any new proposition, or run the risk of another unsuccessful negotiation, until they have information more clear than that which is contained in Mr. Fish's dispatch, respecting the basis upon which the Government of the United States would be disposed to negotiate.

But Her Majesty's government fully agree with Mr. Fish in considering that it would be desirable to turn the difficulties which have arisen between the two governments to good account, by making the solution of them subservient to the adoption, as between themselves in the first instance, of such changes in the rules of public law as may prevent the recurrence between nations that may concur in them of similar difficulties hereafter.

You may assure Mr. Fish that her Majesty's government will be ready to co-operate with the Government of the United States for so salutary a result, which would redound to the mutual honor of both countries,

and, if accepted by other maritime nations, have an important influence toward maintaining the peace of the world.

You will read this dispatch to Mr. Fish, and give him a copy of it if he should desire to have one.

I am, &c.,
(Signed) CLARENDON.

No. 7.

The Earl of Clarendon to Mr. Thornton.

FOREIGN OFFICE, *November* 6, 1869.

SIR: With reference to that passage of Mr. Fish's dispatch of the 25th of September in which he says that the object of his dispatch, which Mr. Motley is at liberty to read to me, is to state calmly and dispassionately, with a more unreserved freedom than might be used in one addressed directly to the Queen's government, what the Government of the United States considers the injuries it has suffered, I have to say that, looking upon this dispatch as not being of a strictly official character, and as being communicated to me personally rather than as the representative of the Queen's government, I have not thought it necessary, in my official reply to the communication made by Mr. Motley, to express my dissent from those statements.

I desire, however, to place before Mr. Fish, in the same manner as Mr. Motley was *instructed to place before me, some [13] observations that have occurred to me to make on the statements in his dispatch, and I accordingly transmit to you a paper to that effect, which you will read to Mr. Fish, giving him a copy if he should desire to have one; and you will explain to him the reasons, as stated in his own dispatch, which have induced me to adopt this course.

I am, &c.,
(Signed) CLARENDON.

[Inclosure in No. 7.]

Observations on Mr. Fish's dispatch to Mr. Motley of the 25th September, 1869, respecting the Alabama, &c., claims.

I. THE QUEEN'S PROCLAMATION OF NEUTRALITY.

Mr. Fish recapitulates the arguments previously used by Mr. Seward as to the "precipitate recognition" of belligerent rights which, he says, "appears in its having been determined on the 6th of May, four days prior to the arrival in London of any official knowledge of the President's proclamation of the 19th of April, 1861," * * * and "signed on the 13th of May, the very day of the arrival of Mr. Adams, the new American minister; as if in the particular aim of forestalling and preventing explanations on the part of the United States."

The facts are:

The President's proclamation of blockade was published April 19. Intelligence of its issue was received by telegraph (see the Times) on the 2d of May.

It was published in the Daily News and other papers on the 3d of May. Mr. Seward, in his dispatch to Mr. Adams of the 12th of January, 1867, says it "reached London on the 3d of May."

A copy was received officially from Her Majesty's consul at New York on the 5th; another copy from Lord Lyons on the 10th. It was communicated officially by Mr. Dallas to Lord Russell on the 11th, with a copy of a circular from Mr. Seward to the United States minister abroad, dated the 20th of April, calling attention to it, and

stating the probability that attempts would be made to "fit out privateers in the ports of England for the purpose of aggression on the commerce of the United States."

The reason of the delay in receiving the copy from Washington was in itself a proof of the existence of civil war, arising, as it did, from the communication between Washington and Baltimore being cut off, in consequence of the confederate troops threatening the capital.

"The prematureness of the measure is further shown by the very tenor of the proclamation:" "Whereas hostilities have unhappily commenced between the Government of the United States of America and certain States styling themselves the Confederate States of America." Exception is also taken to the use of the word "contest," as distinct from "war."

It will be seen on referring to the report of the royal commission for inquiring into the neutrality laws (appendix) that the form of words used is taken from previous proclamations: "Whereas hostilities at this time exist," (June 6, 1823.) "Engaged in a contest," (September 30, 1825, Turkey and Greece.) "Whereas hostilities have unhappily commenced," (May 13, 1859, Austria, France, and Italy.) The same form was used in the case of Spain and Chili (February 6, 1866) and Spain and Peru, (March 13, 1866.) "Hostilities have unhappily commenced," (Austria, Prussia, Italy, Germany, June 27, 1866.)

The order prohibiting prizes from being brought into British ports, for which the United States Government thanked the British government, as being likely to give a death-blow to privateering, speaks of "observing the strictest neutrality in the contest which appears to be imminent," (June 1, 1861.)

It is remarkable that, in the case of Turkey and Greece, British subjects were warned to respect "the exercise of belligerent rights." This is omitted in the United States case, the belligerents being spoken of as "the contending parties."

The expression "States styling themselves the Confederate States of America," was purposely adopted to avoid the recognition of their existence as independent States, and gave them great offense.

The French proclamation of the 10th of June, has "la lutte engagée entre le gouvernement de l'Union et les états qui prétendent former une confédération particulière."

[14] *The Spanish proclamation, which the United States minister at Madrid (see diplomatic correspondence laid before Congress, 1861, p. 244) informed the Spanish government: "The President had read with the greatest satisfaction," issued on the 17th of June, 1861, has "Confederate States of the South," and uses the term "belligerents" three times over.

Mr. Fish's dispatch states that the "assumed belligerency" was a "fiction," the "anticipation of supposed belligerency to come, but which might never have come if not thus anticipated and encouraged by the Queen's government."

What are the facts? A large group of States, containing a population of several millions, and comprising a compact geographical area enabling them to act readily in concert, had established a *de facto* government, with a president, congress, constitution, courts of justice, army, and all the machinery of military and civil power. They possessed the ports along upward of 2,000 miles of coast; with the exception of Forts Pickens and Monroe, all the Federal posts and forts had been evacuated, including Harper's Ferry, the arsenal of the Potomac Valley. Fort Sumter, the only one which had offered resistance, had fallen a month previously, April 13. The confederate troops were in occupation of the Shenandoah lines, and threatening Washington. The confederate president had declared war, and called for a levy of 32,000 troops, to which all the seceded States had responded promptly. On the other hand, the Federal President had called for 75,000 volunteers on the 15th of April, and for 42,000 more on the 3d of May, and as fast as the regiments could be armed they were hurrying to the defense of Washington. The contending armies were, indeed, face to face.

So much for the hostilities on land. The operations at sea, in which British interests were more directly affected, had been carried on with equal vigor. On the 17th of April, the confederate president issued his proclamation, offering to grant letters of marque, which was followed, two days afterward, by the Federal proclamation of blockade. At the date of the Queen's proclamation of neutrality, both these had been carried, or were being carried, into effect. The Federal Government had instituted the blockade of Virginia and North Carolina, which was declared to be effective on the 30th of April, and were rapidly dispatching all the merchant-vessels which they could procure, and which they were able to convert into ships of war, to the blockade of the other ports. The General Parkhill, of Liverpool, was captured by the United States ship Niagara while attempting to run the blockade of Charleston, on the 12th of May; and the British vessels Hilja and Monmouth warned off on the same day. Confederate privateers were already at sea. One was captured at the mouth of the Chesapeake River, on the 8th of May, by the United States ship Harriet Lane. On the 15th, the Federal bark Ocean Eagle, of Rockhead, Maine, was taken by the confederate priva-

teer Calhoun, off New Orleans. At the same port Captain Semmes had already received his commission, and was engaged in the outfit of the Sumter.

Could any explanations which Mr. Adams might have had to offer, alter such a state of things as this? Can any other name be given to it than that of civil war?

It is stated that there was no fact of continued and flagrant "hostilities" to justify the action of Great Britain in issuing a proclamation of neutrality.

Mr. Seward, writing at the time, and previously to the Queen's proclamation, (May 4,) characterized the proceedings of the confederates as "open, flagrant, deadly war," and as "civil war," (Congress papers 1861, page 165,) and in a communication to M. de Tassara, the Spanish minister, referred to the operations of the Federal blockade as belligerent operations which would be carried on with due respect to the rights of neutrals.

Judge Betts, in the cases of the Hiawatha, &c., said, "I consider that the outbreak in particular States, as also in the Confederate States, was an open and flagrant civil war."

It was also judicially decided by the Supreme Court of the United States in the case of the Amy Warwick and other prizes, that "the proclamation of blockade is itself official and conclusive evidence that a state of war existed which demanded and authorized such a measure." Moreover, the joint resolution in Congress, in July, 1861, approving and confirming the acts of the President, (North America, No. 1, 1862, page 57,) commences, "Whereas, since the adjournment of Congress on the 4th of March last, a formidable insurrection in certain States of this Union has arrayed itself in armed hostility;" and a resolution of the House of Representatives, of the 22d of July, 1861, speaks of the "present deplorable civil war," and of "this war."

The date at which the civil war actively commenced has, therefore, been fixed by the published dispatches of the Secretary of State, by proceedings in Congress, by the formal judgment of the United States prize-courts, as well as by the universal assent of all neutral powers concerned; but it is urged that, nevertheless, there was no necessity for Great Britain to take notice of it, as no ship of the insurgents had appeared
[15] in British ports, no collision occurred at sea, nor did the nearness of Great Britain to the seat of hostilities compel her to act.

With regard to the latter point, it is difficult to see how one nation can be much nearer to another than England to the United States, seeing that the British dominions touch the United States on two sides, while the British islands of New Providence, &c., lie immediately in front. As to a collision at sea, it was apparent that British commerce must be interfered with the moment the blockade came into operation, as indeed was the case, several British vessels having been captured before there was time for the intelligence of the proclamation of neutrality to reach America. As to the arrival of confederate ships in British ports, such ships were afloat and might at any time be expected. As Mr. Dana, in the notes to the eighth edition of Wheaton, expresses it, (p. 35,) "it is not fit that cases should be left to be decided as they may arise, by private citizens, or naval or judicial officers, at home or abroad, by sea or land."

The British government were compelled to take action of some sort; was that action really unfriendly? Was it intended to be unfriendly?

No one who recollects what actually passed, or will consult "Hansard," can suppose that the proclamation was intended to be unfriendly. On the contrary, as was stated by Mr. Forster in his speech at Bradford, it was absolutely pressed upon the government by the friends of the Northern States, who were afraid lest confederate privateers should be fitted out in British ports.

Nor was its immediate result injurious to the Federal States. Far from being so, it legitimatized the captures of the blockading squadron, and, in the language of the prize-court, "estopped" the British merchants, whose vessels were seized, from making reclamation.

While the intelligence of the issue of the Queen's proclamation was still fresh, and almost immediately after hearing of the French and Spanish proclamations of neutrality, the President in his message of the 4th of July, 1861, stated that he was "happy to say that the sovereignty and rights of the United States are now practically respected by foreign powers, and a general sympathy with the country is manifested throughout the world."

Does any one really believe that the Queen's proclamation in the very least influenced the movements of the confederate armies? All the preparations for war had been made long before, munitions collected, troops levied, and generals appointed. The proclamation reached America at the end of May, by which the confederates had taken up their position in the upper Potomac, and the Federals had occupied Alexandria, in Virginia, with a force of 13,000 men, (May 24.)

The armies on both sides were in motion; skirmishes were daily occurring; engagements took place at Little Bethel on the 10th of June, at Carthage, Missouri, on the 6th of July, and at Centreville on the 18th, followed by the great battle of Manassas

Junction on the 21st. Can any one suppose that if the proclamation had not been issued that battle would not have been fought?

The charge of premature recognition, on examination, reduces itself to this, that the proclamation ought not to have been issued until Mr. Adams arrived, or until some event called for it. Against this is to be set the fact that the proclamation was considered by some friends of the Northern States as a step taken in their interests, and that it was further pressed upon the government by Mr. Dallas's communication of Mr. Seward's circular. Moreover, confederate privateers were at sea, and British vessels being made prizes by the Federal blockading fleet.

Besides the assertion of the premature recognition of belligerent rights, the dispatch states that maritime enterprises in the ports of Great Britain which would otherwise have been piratical were, "by virtue of the proclamation," rendered lawful, "and thus Great Britain became, and to the end continued to be, the arsenal, the navy-yard, and the treasury of the insurgent confederacy."

Mr. Fish in a preceding passage admits that national belligerency is "an existing fact," and he might have added that it exists independently of any official proclamations of neutral powers, as is shown by the records of the American prize-courts which continually recognize the belligerency of the South American States; although, as Mr. Seward stated in one of his dispatches, the United States have never issued a proclamation of neutrality except in the case of France and England in 1793. This was proved in the civil war by the reception at Curaçoa of the confederate vessel Sumter as a belligerent cruiser, though the Netherlands had issued no proclamation of neutrality. It was this recognition of the Sumter, after her departure from New Orleans, (July 6, 1861,) at Curaçoa, and at Cienfuegos, which first practically accorded maritime belligerent rights to the confederates, a fact which is overlooked when it is alleged
[16] that confederate "belligerency, so far *as it was maritime," proceeded "from the ports of Great Britain and her dependencies alone."

Indeed, it is not going too far to say that the confederates derived no direct benefit from the proclamation. Their belligerency depended upon the fact (a fact which, when we are told that the civil war left behind it two millions and a half of dead and maimed, is unfortunately indisputable) that they were waging civil war. If there had been no proclamation the fact would have remained the same, and belligerency would have had to be recognized either on behalf of the Northern States by admitting the validity of captures on the high seas for the carriage of contraband or breach of blockade, or on the arrival of the Sumter or some similar vessel in a British port.

In no case can it be really supposed that the recognition of belligerency, which, unless neutral nations abandoned their neutrality and took an active part in the contest, was inevitable, materially influenced the fortunes of such a fearful and protracted civil war.

At all events, if it did, the confederates never acknowledged it; the recognition of belligerency they regarded (as indeed was the case) as a right which could not be denied to them. What they sought was not the mere technical title of "belligerents," but a recognition of independence, and, when they found that it was hopeless to expect England to accord it, they cut off all intercourse with this country, expelled Her Majesty's consuls from their towns, and did everything in their power to show the sense which they entertained of the injury which they believed had been inflicted upon them. The result being that, while one side has blamed us for doing too much, the other side has blamed us for doing too little; and thus an assumption of neutrality has been regarded both by North and South as an attitude of hostility.

As to the Queen's proclamation rendering lawful the dispatch of the Alabama, Shenandoah, and Georgia, from British ports, to which it is to be presumed the expression "maritime enterprises" refers, it is to be remarked that it is exactly against such enterprises that the proclamation reciting the terms of the foreign-enlistment act was intended to warn British subjects. Instead of rendering them lawful it rendered them additionally unlawful, by giving notice of their illegality.

There would be no difficulty in showing by precedents from American prize-courts that no proclamation of neutrality is required to confer belligerent rights on vessels commissioned by a *de facto* government.

It is admitted that at the time these "enterprises" were undertaken, "hostilities" in America were being prosecuted "on a scale of gigantic magnitude." After, therefore, the Alabama escaped on the 29th of July, 1862, she became, by virtue of her confederate commission, undoubtedly a belligerent cruiser, irrespective of any acknowledgment of belligerency by Great Britain, and was received accordingly by the French authorities at Martinique, where she first touched after leaving Liverpool.

A pirate is *hostis humani generis*, one owing obedience to no authority. If the Alabama had been really a pirate depredating on American commerce, it would have been the duty of the French to seize her and execute justice on her commander and crew, a pirate being triable wheresoever found.

Judge Nelson, in the case of the confederate privateer Savannah, ruled that though confederate privateers were pirates *quoad* American jurisdiction, they were not pirates

jure gentium; and, in the case of the Golden Rocket, in which the owner brought an action in an American court against an insurance company for the capture of his ship by the Florida, he being insured against piracy but not against war-risk, it was decided that captures by confederate cruisers were not "piracy" within the usual meaning of the word, and that the company was not liable.

The American courts having thus conclusively dealt with the matter, it is unnecessary to pursue the subject further. What is probably meant is, that if the confederates had not possessed a *de facto* government, and had not been belligerents in the sense of waging public war, vessels under their commission would have been mere roving adventurers, pursuing merchantmen for the sake of private plunder, in short, pirates; but by the admission that "hostilities" (the very word to which exception is taken in the neutrality proclamation) were being prosecuted on a great scale, the only ground on which such a supposition could rest is cut away.

II. The dispatch of confederate cruisers from British ports.

Any one who read the dispatch without any previous knowledge of the subject might suppose from the language used that fleets of privateers had been dispatched from British ports with the connivance if not with the direct support of Her Majesty's government:

"Great Britain * * *permitted* armed cruisers to be fitted out," &c.

[17] * "The Queen's government * * * *suffered* ship after ship to be constructed in its ports to wage war on the United States."

"Many ships * * * were, with ostentatious publicity, being constructed."

"*Permission* or negligence which enabled confederate cruisers from her ports to prey," &c.

"Great Britain alone had founded on that recognition a systematic maritime war," * * * "a virtual act of war."

"Suffering the fitting out of rebel cruisers."

The fact being, that *only one vessel*, of whose probable intended belligerent character the British government had any evidence, escaped, viz, the Alabama.

The Shenandoah was a merchant-ship employed in the India trade under the name of the Sea King. Her conversion into a confederate cruiser was not heard of until more than a month after she had left England.

The Georgia, or Japan, was actually reported by the board of trade surveyor, who had no idea of her destination, to be built as a merchant-ship, and to be rather crank. Nothing was known of her proceedings until she had taken her arms and crew on board in Morlaix Bay, and reached Cherbourg. Her real point of departure, as a cruiser, was France, and not England.

The Florida was detained at Nassau on suspicion, but discharged by the local admiralty court, there being no evidence of her being anything but a blockade-runner. She was fitted out as a ship of war at Mobile.

On the other hand, the British government prevented the outfit of the Rappahannock, prosecuted and detained the Alexandra, seized the Liverpool rams, and stopped the Pampero, besides investigating carefully every case of suspected outfit brought forward by Mr. Adams, and he complained of nineteen, as well as every case which could be discovered independently. Among other things, taking charge of Captain Osborne's Anglo-Chinese flotilla, which it was apprehended might fall into the hands of the confederates, at a cost to this country of £100,000.

That any sea-going steamer can be converted into a cruiser by strengthening her bulkheads and arming her, which can be done at sea as well as on shore, is proved by the fact that the most efficient blockading-vessels in the Federal Navy were converted blockade-runners.

The Alabama.—Mr. Fish speaks of the neglect of the officers of the British government to detain confederate cruisers, and especially the Alabama.

There was no neglect to detain the Shenandoah, or Georgia, for the reason that neither the government nor its officers knew they were being intended for the confederate service. Indeed, it has never been proved that the persons who sold those vessels knew it. Probably they did, but a case might very readily arise in which the venders might be really ignorant. The American Government could not have expected the English revenue officers to prevent every large steamer leaving England in ballast.

With regard to the Alabama, it is assumed "that the negligence of the officers of the British government was gross and inexcusable, and such as indisputably to devolve on that government full responsibility for all the depredations committed by her. Indeed, this conclusion seems in effect to be conceded in Great Britain. At all events, the United States conceive that the proofs of responsible negligence in this matter are so clear that no room remains for debate on that point; and it *should be taken for granted in all future negotiations with Great Britain.*"

By a *petitio principii*, the whole argument is thus assumed to be in favor of the United States.

There is no doubt that the Alabama might, if she had not escaped at the moment when the case against her appeared to be legally established, have been seized and tried under the foreign-enlistment act, though the result, looking to what occurred in the case of the Alexandra, might have been doubtful.

This, however, is a very different thing from admitting that her sale to the confederates was a violation of British neutrality for which the nation is responsible. This was the first instance which occurred of the sale of a ship under such circumstances, and the British government had, in fact, no suspicion of what was going to be done in the matter, no information having been received of an intention to take out her arms and crew in a separate vessel.

Judge Story, in the well-known case "Santissma Trinidad and St. Ander," laid it down as indisputable that "there is nothing in our laws, or in the laws of nations, that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale. It is a commercial venture, which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation."

[18] *But it must be remembered that when Mr. Fish claims compensation for *all* her depredations, he should not overlook the fact of the negligence shown by the Federal Navy in twice letting her escape from them. First, when Mr. Adams urged the captain of the Federal ship, which, at his instance, had gone to Holyhead to look after her, to pursue her, when the captain refused, and went off to his station at Gibraltar instead—a proceeding at which Mr. Adams expressed the greatest indignation, (See Congress papers, 1862, page 159;) and secondly, when the United States ship San Jacinto blockaded her in the French port of St. Pierre, Martinique, and then suffered her to slip away at night from under her bows.

III. Supplies furnished to the confederates by British subjects.

Mr. Fish states that the confederates had no ships, no mechanical appliances, no open sea-ports, &c., and implies that the maritime force of the confederates was entirely derived from England.

The Sumter, Nashville, and Florida, however, all sailed from confederate ports in which they were armed and fitted out, besides a variety of small coasting privateers, such as the Tallahassee, whose captures form a considerable item in the list of Federal maritime losses lately presented to Congress.

"On the land it was in like manner the munitions of war and the wealth drawn by the insurgents from Great Britain which enabled them to withstand, year after year, the arms of the United States."

If, as Mr. Fish states, the confederates had no open sea-ports, how did these munitions and arms reach them?

Either the blockade was inefficient, in which case it was illegal, and neutral nations were not bound to respect it, or it was efficient, as it was recognized by Great Britain to be, and the supply of arms, &c., was hazardous and uncertain.

There is no doctrine more clearly settled than that neutral nations are not responsible for the supplies of contraband sent through a blockade by their subjects. Indeed, the very existence of a blockade implies this, for, if it were the duty of neutrals to prevent the shipment of supplies to belligerents, why should there be a blockade at all? Each side would claim compensation for the assistance rendered to the other, and neutrality would become impossible.

If once it be conceded that blockade-running is an offense against neutrality in a civil war, the precedent would not fail to be invoked in all wars by whichever belligerent considered himself most aggrieved. Instead of establishing a principle in the interests of future peace, this would lead to endless complications and claims and counter-claims which would make the end of one war the sure beginning of another.

The question of the action of the Dutch in the war of independence cannot be dealt with without a review of the history of the period, for which this memorandum does not afford space. An account of the proceedings at St. Eustache, and subsequent discussions with the Dutch government, will be found in De Marten's Nouvelles Causes Célébres du Droit des Gens.

As to supplies sent through the blockade having been organized by confederate agents in England, the example was set them by the bureau established by Franklin at Paris for the assistance of the American provinces.

On the other hand, it is notorious that the Federal troops were plentifully provided with arms and munitions from this country.

Her Majesty's government have yet to learn that it has been held in international discussions that individuals are precluded from supplying belligerents with munitions of war.

IV. Indirect injury to American commerce.

"Indirectly the effect was to increase the rate of insurance in the United States, to diminish exports and imports, and otherwise obstruct domestic industry and produc-

tion, and to take away from the United States its immense foreign commerce and to transfer this to the merchant-vessels of Great Britain."

Mr. Fish proceeds to quote figures, showing the decrease in American tonnage between 1860 and 1866.

This allegation of national indirect or constructive claims was first brought forward officially by Mr. Reverdy Johnson, in his attempt to renew negotiations on the claims convention in March last, (North America, No. 1, 1869, page 46.)

Mr. Thornton has shown the difficulty there would be in computing the amount
[19] of *claim even if it were acknowledged, (North America, No. 1, 1869, page 53,) in a dispatch in which he mentions the continual decrease of American tonnage.

This is partly, no doubt, to be ascribed to the disturbance of commercial relations consequent on a long war, partly to the fact that many vessels were nominally transferred to British owners during the war to escape capture. Sir E. Hornby, in a recent report, states that this was a constant practice in China.

Is not, however, a good deal of it to be attributed to the high American tariff, which makes the construction of vessels in American ports more expensive than ship-building in England, and has thereby thrown so large a proportion of the carrying-trade into English hands?

There must be some such cause for it, or otherwise American shipping would have recovered its position since the war, instead of continuing to fall off.

"Neither in the events which preceded that war" (of 1812) "nor in the events of the war itself did the United States suffer more," &c.

No one can now wish to recall to recollection the particular events of that war; it would be much better for the two nations to congratulate themselves that one of the principal causes of it—the nationality dispute—has, it is to be hoped, been set at rest finally by Lord Stanley's protocol.

V. The dispatch, in conclusion, refers "to important changes in the rules of public law," the desirableness of which has been demonstrated, but does not say what are the changes to which it alludes.

This is in the spirit of the proposal made by Her Majesty's government in December, 1865, (North America, No. 1, 1866, page 164:)

"I, however, asked Mr. Adams whether it would not be both useful and practical to let by-gones be by-gones, to forget the past, and turn the lessons of experience to account for the future. England and the United States, I said, had each become aware of the defects that existed in international law, and I thought it would greatly redound to the honor of the two principal maritime nations of the world to attempt the improvements in that code which had been proved to be necessary. It was possible, I added, that the wounds inflicted by the war were still too recent, and that the ill-will toward England was still too rife, to render such an undertaking practicable at the present moment; but it was one which ought to be borne in mind, and that was earnestly desired by Her Majesty's government, as a means of promoting peace and abating the horrors of war, and a work, therefore, which would be worthy of the civilization of our age, and which would entitle the governments which achieved it to the gratitude of mankind.

It is not necessary in this memorandum to dwell on the alleged efficiency of the American, as compared to the English foreign-enlistment act. The failure of the American act in the Portuguese cases, in the repeated filibustering expeditions of Walker against Central America, and the acquittal under it of Lopez, the invader of Cuba, are proofs that its action cannot always be relied upon; and this is further corroborated by the difficulties now being experienced in dealing with the Hornet at Wilmington. Although, as Mr. Fish says, there have been prosecutions under it, it is believed that from the trial of Gideon Henfield, in 1793, to the present day, there has never been a criminal conviction. The only result of the proceedings *in rem* has been to restore prizes—never to punish privateering; and the effect of the bonds which the act provides may be taken that the *owners* of a vessel shall not *themselves* employ her in a belligerent service, and which has, it is believed, never been practically enforced, is, as Mr. Bemis, of Boston, points out in his volume on American neutrality, to add so much to the price of the vessel.

With regard to the claims for "vast national injuries," it may be as well to observe that Professor Wolsey, the eminent American jurist, has repudiated them as untenable; while the strongest arguments in favor of the recognition of confederate belligerency are to be found in the notes to Mr. Dana's eighth edition of Wheaton; and Mr. Lawrence, (the editor of the second annotated edition of Wheaton,) in a recent speech at Bristol, stated that "as far as respects the complaint founded on the recognition of the belligerent rights of the confederates, I cannot use too strong language in pronouncing its utter baseless character. No tyro in international law is ignorant that belligerency is a simple question of fact. With the late Sir Cornewall Lewis, we may ask, if the array of a million men on each side does not constitute belligerency, what is belligerency? But what was the proclamation of the President, followed up by the condemnation of your ships and cargoes for a violation of the blockade which is

[20] established, *but a recognition of a state of war? At this moment the United States, in claiming the property of the late confederate government, place before your tribunals their title on the fact of their being the successors of a *de facto* government. I repeat that however valid our claims may be against you on other grounds, there is not the slightest pretext for any claim against you based on the public admission of a notorious fact, the existence of which has been recognized by every department of the Federal Government."

No. 8.

Mr. Thornton to the Earl of Clarendon.

WASHINGTON, *November* 22, 1869. (Received December 4.)

MY LORD: In compliance with the instructions contained in your lordship's dispatch of the 6th instant, I went to the State Department and read that dispatch to the Secretary of State, leaving a copy of it, at his request, in his hands.

I then explained to him the reason, as set forth in your lordship's other dispatch of the 6th instant, which had induced you to follow his example as to the form which you had adopted to express your dissent from the statements contained in his dispatch to Mr. Motley of the 25th of September last, after which I proceeded to read to him the paper containing your lordship's observations, and, at his request, gave him a copy of it.

Mr. Fish heard me read both the above-mentioned documents without making any remark whatever, and, upon my concluding, merely said that they would be taken into consideration by his Government; at the same time expressing his hope that some means might be found of coming to an amicable arrangement of all the questions at issue.

Since that interview I have not seen Mr. Fish, so that he has not had an opportunity of telling me whether he intends to make any communication upon the subject to Mr. Motley by this mail.

I have, &c.,

(Signed) EDWD. THORNTON.

No. 9.

The Earl of Clarendon to Mr. Thornton.

FOREIGN OFFICE, *January* 12, 1870.

SIR: Mr. Motley has this day read to me a dispatch dated the 22d ultimo, from Mr. Fish, stating that among the papers respecting the Alabama claims that had been presented to the Senate he had not included my dispatch of the 6th of November, and the memorandum it inclosed, which he did not consider to be official, as the memorandum was not signed or dated, and as in my other dispatch of the same date I had said that Her Majesty's government did not propose to follow Mr. Fish through the long recapitulation contained in his dispatch of the 25th of September, of the various points that had been discussed in the voluminous correspondence that had taken place between the two governments for several years.

I said that this decision of Mr. Fish's, which seemed to be founded on a mistake, was much to be lamented; and I stated that his dispatch of

the 25th of September had been read with surprise and regret by Her Majesty's government; but, after due deliberation, they had determined to extract from it such passages as might be considered friendly and exhibiting a desire for the settlement of differences, in order to place on record the cordial concurrence of Her Majesty's government in those sentiments, and their readiness to resume negotiations, although, for obvious reasons, no fresh proposal could originate with them. By adopting this course, and abstaining from controversial discussion, it was thought that the policy of Her Majesty's government might in a convenient form be distinctly indicated; but it was impossible that the allegations against England contained in Mr. Fish's dispatch should remain unanswered, or that the people of either country should be induced to think that Her Majesty's government had allowed judgment to go by default; and we accordingly, in a separate dispatch, inclosed the observations that, in our opinion, the national honor required.

Her Majesty's government thereby followed the example of Mr. Fish, who had made a distinction between Her Majesty's government
[21] and myself, in order, as he said, *to state calmly and dispassionately, and with a more unreserved freedom than might be used in a dispatch addressed directly to the Queen's government, what the Government of the United States seriously considered to be the injuries it had suffered. My colleagues and I, however, did not consider the dispatch as personal or confidential to myself, or otherwise than as an official communication from the Government of the United States.

In the same manner, I added, my second dispatch of the 6th of November could not be considered otherwise than as an official communication. The memorandum it inclosed was not signed or dated, for that was not customary or necessary; but the dispatch in which it was inclosed was both dated and signed, and the document was thereby made official, and a copy of it was placed in Mr. Fish's hands.

I did not question the right of Mr. Fish to deal with the correspondence in any manner he thought fit, but that, for my own part, I must say that, in presenting a correspondence to Parliament, I should not think it right to withhold the observations of a foreign government upon an important dispatch of mine that had been officially communicated to it.

The publication of the correspondence was, in my opinion, to be regretted, as having a tendency to prolong discussion and not to allay irritation; but when it became known here that the correspondence had been sent to the Senate, Her Majesty's government had no other alternative than to publish the whole, as the British public had a right to expect that important information should be furnished to them by their own government, and not be derived from the newspapers of another country.

Mr. Motley, in a friendly tone, supported the views of Mr. Fish, and a conversation followed upon the general subject, which I do not think it necessary to report, because Mr. Motley desired that it should not be considered to have an official character, as negotiations, if they were resumed, would be conducted at Washington.

I am, &c.,
(Signed) CLARENDON.

NORTH AMERICA. NO. 1. (1871.)

CORRESPONDENCE

RESPECTING THE

APPOINTMENT OF A JOINT HIGH COMMISSION

TO

CONSIDER THE VARIOUS QUESTIONS

AFFECTING THE

RELATIONS BETWEEN GREAT BRITAIN AND THE UNITED STATES OF AMERICA.

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[3] *CORRESPONDENCE RESPECTING THE APPOINTMENT OF A JOINT HIGH COMMISSION TO CONSIDER THE VARIOUS QUESTIONS AFFECTING THE RELATIONS BETWEEN GREAT BRITAIN AND THE UNITED STATES OF AMERICA.

No. 1.

Sir E. Thornton to Earl Granville.

[Extract.]

WASHINGTON, *February* 6, 1871. (Received February 19.)

I have the honor to inclose copies of a correspondence which has passed between Mr. Fish and myself relative to the appointment of a joint high commission to sit at Washington for the purpose of considering the questions which have lately arisen relative to the Canadian fisheries, and any others which affect the relations of the United States toward Her Majesty's possessions in North America, the so-called Alabama claims, and any other claims of British subjects or citizens of the United States arising out of acts committed during the late civil war in this country.

[Inclosure 1 in No. 1.]

Sir E. Thornton to Mr. Fish.

WASHINGTON, *January* 26, 1871.

SIR: In compliance with an instruction which I have received from Earl Granville, I have the honor to state that Her Majesty's government deem it of importance to the good relations which they are ever anxious should subsist and be strengthened between the United States and Great Britain, that a friendly and complete understanding should be come to between the two governments as to the extent of the rights which belong to the citizens of the United States and Her Majesty's subjects respectively, with reference to the fisheries on the coasts of Her Majesty's possessions in North America, and as to any other questions between them which affect the relations of the United States toward those possessions.

As the consideration of these matters would, however, involve investigations of a somewhat complicated nature, and as it is very desirable that they should be thoroughly examined, I am directed by Lord Granville to propose to the Government of the United States the appointment of a joint high commission, which shall be composed of members to be named by each government, shall hold its sessions at Washington, and shall treat of and discuss the mode of settling the different questions which have arisen out of the fisheries, as well as all those which affect the relations of the United States toward Her Majesty's possessions in North America.

I am confident that this proposal will be met by your Government in the same cordial spirit of friendship which has induced Her Majesty's government to tender it, and I cannot doubt that in that case the result will not fail to contribute to the maintenance of the good relations between the two countries which I am convinced the Government of the United States, as well as that of Her Majesty, equally have at heart.

I have, &c.,
(Signed) EDWD. THORNTON.

[4] *[Inclosure 2 in No. 1.]

Mr. Fish to Sir E. Thornton.

DEPARTMENT OF STATE,
Washington, January 30, 1871.

SIR: I have the honor to acknowledge the receipt of your note of the 26th January, in which you inform me, in compliance with instructions from Earl Granville, that Her Majesty's government deem it of importance to the good relations which they are ever anxious should subsist and be strengthened between the United States and Great Britain, that a friendly and complete understanding should be come to between the two governments as to the extent of the rights which belong to the citizens of the United States and Her Majesty's subjects respectively, with reference to the fisheries on the coasts of Her Majesty's possessions in North America, and as to any other questions between them which affect the relations of the United States toward those possessions; and, further, that as the consideration of these questions would involve investigations of a somewhat complicated nature, and as it is very desirable that they should be thoroughly examined, you are directed by Lord Granville to propose to the Government of the United States the appointment of a joint high commission, which shall be composed of members to be named by each government, shall hold its sessions at Washington, and shall treat of and discuss the mode of settling the different questions which have arisen out of the fisheries, as well as all those which affect the relations of the United States toward Her Majesty's possessions in North America.

I have laid your note before the President, who instructs me to say that he shares with Her Majesty's government the appreciation of the importance of a friendly and complete understanding between the two governments with reference to the subjects specially suggested for the consideration of the proposed joint high commission, and he fully recognizes the friendly spirit which has prompted the proposal.

The President is, however, of the opinion that without the adjustment of a class of questions not alluded to in your note, the proposed high commission would fail to establish the permanent relations, and the sincere, substantial, and lasting friendship between the two governments which, in common with Her Majesty's government, he desires should prevail.

He thinks that the removal of the differences which arose during the rebellion in the United States, and which have existed since then, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the "Alabama claims," will also be essential to the restoration of cordial and amicable relations between the two governments.

He directs me to say that, should Her Majesty's government accept this view of this matter, and assent that this subject also may be treated of by the proposed high commission, and may thus be put in the way of a final and amicable settlement, this Government will, with much pleasure, appoint high commissioners on the part of the United States, to meet those who may be appointed on behalf of Her Majesty's government, and will spare no efforts to secure, at the earliest practicable moment, a just and amicable arrangement of all the questions which now, unfortunately, stand in the way of an entire and abiding friendship between the two nations.

I have, &c.,
(Signed) HAMILTON FISH.

[Inclosure 3 in No. 1.]

Sir E. Thornton to Mr. Fish.

WASHINGTON, *February* 1, 1871.

SIR: I have the honor to acknowledge the receipt of your note of the 30th ultimo, and to offer you my sincere and cordial thanks for the friendly and conciliatory spirit which pervades it.

With reference to that part of it in which you state that the President thinks that the removal of the differences which arose during the rebellion in the United States, and which have existed since then, growing out of the acts committed by the several vessels which have given rise to the claims generally known as the Alabama claims, will also be essential to the restoration of cordial and amicable relations between the two governments, I have the honor to inform you that I have submitted to Earl Granville the opinion thus expressed by the President of the United States, the friendliness of which I beg you to believe I fully appreciate.

[5] *I am now authorized by his lordship to state that it would give Her Majesty's government great satisfaction if the claims commonly known by the name of Alabama claims were submitted to the consideration of the same high commission by which Her Majesty's government have proposed that the questions relating to the British possessions in North America should be discussed, provided that all other

claims, both of British subjects and citizens of the United States, arising out of acts committed during the recent civil war in this country, are similarly referred to the same commission.

The expressions made use of in the name of the President in your above-mentioned note with regard to the Alabama claims, convince me that the Government of the United States will consider it of importance that these causes of dispute between the two countries should also and at the same time be done away with, and that you will enable me to convey to my government the assent of the President to the addition which they thus propose to the duties of the high commission, and which cannot fail to make it more] certain that its labors will lead to the removal of all differences between the two countries.

I have, &c.,
(Signed) EDWD. THORNTON.

[Inclosure 4 in No. 1.]

Mr. Fish to Sir E. Thornton.

DEPARTMENT OF STATE,
Washington, February 3, 1871.

SIR: I have the honor to acknowledge the receipt of your note of the 1st instant, in which you inform me that you are authorized by Earl Granville to state that it would give Her Majesty's government great satisfaction if the claims commonly known by the name of the Alabama claims were submitted to the consideration of the same high commission by which Her Majesty's government have proposed that the questions relating to the British possessions in North America should be discussed, provided that all other claims, both of British subjects and citizens of the United States, arising out of acts committed during the recent civil war in this country, are similarly referred to the same commission.

I have laid your note before the President, and he has directed me to express the satisfaction with which he has received the intelligence that Earl Granville has authorized you to state that Her Majesty's government has accepted the views of this Government as to the disposition to be made of the so-called Alabama claims.

He also directs me to say, with reference to the remainder of your note, that if there be other and further claims of British subjects or of American citizens growing out of acts committed during the recent civil war in this country, he assents to the propriety of their reference to the same high commission; but he suggests that the high commissioners shall consider only such claims of this description as may be presented by the governments of the respective claimants at an early day, to be agreed upon by the commissioners.

I have, &c.,
(Signed) HAMILTON FISH.

No. 2.

Earl Granville to Sir E. Thornton.

FOREIGN OFFICE, *February* 23, 1871.

SIR: I received on the 19th instant your dispatch of the 6th instant, inclosing copies of letters exchanged between yourself and the Secretary of State of the United States, relative to the appointment of a joint high commission, to sit at Washington, for the purpose of considering pending questions between this country and the United States.

Her Majesty's government having been regularly informed by you by telegraph of the satisfactory character of this correspondence, did not hesitate at once to send out the British members of the commission, and Lord de Grey and Mr. Bernard accordingly embarked for New York on the 11th, and Sir Stafford Northcote on the 18th instant; and it now only remains for me to acquaint you formally that Her Majesty's government entirely approve of the tenor of your letters to Mr. Fish.

I am, &c.,
(Signed) GRANVILLE.

[6] *No. 3.

Full power to the Earl de Grey and Ripon, Sir Stafford Henry Northcote, Sir Edward Thornton, Sir John Alexander Macdonald, and Montague Bernard, Esq., to negotiate with plenipotentiaries of the United States.

VICTORIA R.: Victoria, by the grace of God, Queen of the United Kingdom of Great Britain and Ireland, defender of the faith, &c., &c., &c., to all and singular to whom these presents shall come, greeting. Whereas, for the purpose of discussing in a friendly spirit with commissioners to be appointed on the part of our good friends the United States of America, the various questions on which differences have arisen between us and our said good friends, and of treating for an agreement as to the mode of their amicable settlement, we have judged it expedient to invest fit persons with full power to conduct on our part the discussions in this behalf: Know ye, therefore, that we, reposing especial trust and confidence in the wisdom, loyalty, diligence, and circumspection of our right trusty and right well-beloved cousin and councilor George Frederick Samuel, Earl de Grey and Ripon, Viscount Goderich, a peer of our United Kingdom, president of our most honorable privy council, knight of our most noble order of the Garter, &c., &c.; of our right trusty and well-beloved councilor Sir Stafford Henry Northcote, baronet, a member of Parliament, companion of our most honorable order of the Bath, &c., &c.; of our trusty and well-beloved Sir Edward Thornton, knight commander of our most honorable order of the Bath, our envoy extraordinary and minister plenipotentiary to our good friends the United States of America, &c., &c.; of our trusty and well-beloved Sir John Alexander Macdonald, knight commander of our most honorable order of the Bath, a member of our privy council for Canada, and minister of justice and attorney-general in our Dominion of Canada, &c., &c.; and of our trusty and well-beloved Montague Bernard, esquire, chichele professor of international law in the University of Oxford; have named, made, constituted, and appointed, as we do by these presents name, make, constitute, and appoint them, our undoubted high commissioners, procurators, and plenipotentiaries; giving to them, or to any three or more of them, all manner of power and authority to treat, adjust, and conclude with such minister or ministers as may be vested with similar power and authority on the part of our good friends the United States of America, any treaties, conventions, or agreements that may tend to the attainment of the abovementioned end, and to sign for us and in our name everything so agreed upon and concluded, and to do and transact all such other matters as may appertain to the finishing of the aforesaid work in as ample manner and form, and with equal force and efficacy, as we ourselves could do if personally present; engaging and promising upon our royal word, that whatever things shall be so transacted and concluded by our said high commissioners, procurators, and plenipotentiaries, shall be agreed to, acknowledged, and accepted by us in the fullest manner, and that we will never suffer, either in the whole or in part, any person whatsoever to infringe the same, or act contrary thereto, as far as it lies in our power.

In witness whereof we have caused the great seal of our United Kingdom of Great Britain and Ireland to be affixed to these presents, which we have signed with our royal hand.

Given at our court at Windsor Castle, the sixteenth day of February, in the year of our Lord one thousand eight hundred and seventy-one, and in the thirty-fourth year of our reign.

NORTH AMERICA. No. 3. (1871.)

INSTRUCTIONS

TO

HER MAJESTY'S HIGH COMMISSIONERS,

AND

PROTOCOLS OF CONFERENCES

HELD AT

WASHINGTON BETWEEN FEBRUARY 27 AND MAY 6, 1871.

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[1] *INSTRUCTIONS TO HER MAJESTY'S HIGH COMMISSIONERS, AND PROTOCOLS OF CONFERENCES HELD AT WASHINGTON BETWEEN FEBRUARY 27 AND MAY 6, 1871.

No. 1.

Earl Granville to Her Majesty's High Commissioners.

FOREIGN OFFICE, *February* 9, 1871.

MY LORD AND GENTLEMEN: The Queen having been graciously pleased to appoint you to be Her Majesty's high commissioners to proceed to Washington for the purpose of discussing in a friendly spirit with commissioners to be appointed by the Government of the United States the various questions on which differences have arisen between Great Britain and that country, and of treating for an agreement as to the mode of their amicable settlement, I inclose the necessary full powers, and have the honor to convey to you the following instructions for your guidance.

It is the earnest desire of Her Majesty's government that the important negotiation with which you are intrusted should be conducted in a mutually conciliatory disposition and with unreserved frankness in your communications with the high commissioners or members of the Government of the United States with whom you may be placed in communication, and they believe that this object cannot be better attained than by leaving you full discretion as to the manner in which the subjects which may engage your attention should be discussed.

The principal subjects will probably be:

1. The fisheries.
2. The free navigation of the river St. Lawrence and privilege of passage through the Canadian canals.
3. The transit of goods through Maine, and lumber-trade down the river St. John.
4. The Manitoba boundary.
5. The claims on account of the Alabama, Shenandoah, and certain other cruisers of the so-styled Confederate States.
6. The San Juan water boundary.
7. The claims of British subjects arising out of the civil war.
8. The claims of the people of Canada on account of the Fenian raids.
9. The revision of the rules of maritime neutrality.

Copies of all the correspondence which have been presented to Parliament respecting these questions will be forwarded for your use.

1. THE FISHERIES.

On the termination of the reciprocity treaty of the 5th of June, 1854, by the United States Government, the discussions respecting the rights of American fishermen under Article I of the convention of the 20th of October, 1818, which had been set at rest by the reciprocity treaty, were revived, and, although temporary measures were taken to avoid

pressing with severity upon American fishermen by the adoption of a system of licenses, it has been found impracticable to continue that system indefinitely, and, on its withdrawal, much excitement has been occasioned among the coast population of the Eastern States of the Union by the capture of boats engaged in illegal fishing, contrary to the convention of 1818.

The correspondence will put you in possession of the facts of the several captures, and enable you to judge, and explain, if necessary,
[2] how far the pretensions of the American *fishermen are exaggerated, and the leniency with which they have been treated under the directions of Her Majesty's government and of the government of the Dominion by the officers charged with the protection of the British fisheries.

Irrespective, however, of the captures and confiscations of boats during the recent fishing season, there are, and have been for many years, differences of interpretation put upon the convention of 1818 by the respective governments, which might, at any time, rise into serious importance.

The two chief questions are: As to whether the expression "three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions" should be taken to mean a limit of three miles from the coast-line or a limit of three miles from a line drawn from headland to headland; and whether the proviso that "the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever," is intended to exclude American vessels from coming in shore to traffic, transship fish, purchase stores, hire seamen, &c.

Her Majesty's government would be glad to learn that you were able to arrive at a conclusive understanding with the commissioners of the United States upon the disputed interpretation of the convention of 1818; but they fear that you will find it expedient that a settlement should be arrived at by some other means, in which case they will be prepared for the whole question of the relations between the United States and the British possessions in North America, as regards the fisheries, being referred for consideration and inquiry to an international commission, on which two commissioners to be hereafter appointed, in consultation with the government of the Dominion, should be the British representatives.

Should the Government of the United States concur in this, it would be advisable that no time should be lost in appointing commissioners on their side, and in the commission commencing its labors; and, as it is scarcely probable that the commissioners will be able to report, and a treaty be framed, before the commencement of the next fishing season, it would be also desirable that you should agree upon some means, by license or otherwise, by which disputes may be avoided in the meanwhile.

2. Free navigation of the river St. Lawrence, and privilege of passage through the Canadian canals.

The President of the United States, in his message at the opening of Congress in December last, referred to the claim of free navigation of the river St. Lawrence as being an occasion of difference between the two countries.

The fourth article of the reciprocity treaty provided that the citizens

and inhabitants of the United States should be allowed to navigate the river St. Lawrence and the canals of Canada; and Her Majesty's government are not aware that any practical difficulty as to the free navigation of the St. Lawrence has arisen since the abrogation of that treaty.

The exclusive right to the navigation of the St. Lawrence was maintained by this country throughout the discussions between the two governments on the subject in 1824–'27, and has been acknowledged as existing by this article of the reciprocity treaty, under which the British government retained the right of suspending the privilege.

Her Majesty's government are, nevertheless, now willing to admit the principle of the navigation of the St. Lawrence being free to the citizens of the United States, subject to such tolls and regulations as may be imposed equally on British subjects.

This, however, cannot extend, except as a special privilege, to the passage through the canals constructed by Canadian enterprise through British territory, without which, from the strength of the current and dangerous rapids, the navigation of the St. Lawrence cannot be profitably conducted; and the best course will probably be found to be to refer these questions for detailed examination and mutual arrangement in relation to the transit of goods in bond through Maine, St. John River lumber-trade, navigation of Lake Michigan, passage through the canals in United States territory, and other similar matters, to the commission to be appointed to consider and report upon the fisheries.

4. The Manitoba boundary.

The President has already intimated to Congress that he is of opinion that the survey of the boundary along the forty-ninth parallel, which has only been carried out across the Rocky Mountains to the Gulf of Georgia, should be completed from the Lake of the Woods to the foot of the Rocky Mountains.

[3] *In this Her Majesty's government concur, and will be ready to appoint a commission for the purpose whenever the United States Government think fit.

5. The Alabama, Shenandoah, etc., claims.

Under this head are comprised the claims against Great Britain for damages sustained by the depredations of the Alabama, Shenandoah, and Georgia, the vessels which were furnished on account of the so-styled Confederate States and armed outside of British jurisdiction, and of the Florida, which, though built in England, was armed and equipped in the port of Mobile.

The history of these vessels is so fully explained in the long correspondence which has taken place with regard to them, that it is unnecessary for me now to do more than point out that the claims which have been preferred on account of the Alabama stand on a different footing to those arising from the captures made by the other cruisers; in so far as the Alabama escaped from Liverpool after evidence had been supplied by the United States minister of the service for which she was intended.

Her Majesty's government adhere to the principle of arbitration for the settlement of these claims, which was recognized and adopted in the convention signed by Lord Clarendon and Mr. Reverdy Johnson as being, in their opinion, the most appropriate mode of settling this ques-

tion; and, should arbitration be adopted, Her Majesty's government would concur, if the United States Government proposed it, in jurists properly selected being made the arbitrators instead of a sovereign or state, as provided in the late convention.

Although, however, Her Majesty's government are of opinion that arbitration is the most appropriate mode of settlement, you are at liberty to transmit for their consideration any other proposal which may be suggested for determining and closing the question of these claims.

For the escape of the Alabama and consequent injury to the commerce of the United States, Her Majesty's government authorize you to express their regret in such terms as would be agreeable to the Government of the United States and not inconsistent with the position hitherto maintained by Her Majesty's government as to the international obligations of neutral nations.

6. The San Juan water boundary.

The line of water boundary under the first article of the treaty of June 15, 1846, upon which the British and American commissioners appointed for its demarkation differed, was proposed by Lord Russell as a fit subject for arbitration in 1859; but, owing to the civil war, the negotiations then instituted were not brought to a conclusion, and it was not until the 14th of January, 1869, that a convention was signed between Lord Clarendon and Mr. Reverdy Johnson for referring the matter to an arbitrator; the President of the Swiss Confederation being selected at the instance of the Government of the United States.

Although this convention was recommended by the Senate Committee of Foreign Affairs for ratification,[1] it has not been brought before the Senate, and the period within which its ratification should have taken place has now expired.

This delay has been accounted for by the United States Government as having been occasioned by the delay, necessarily unavoidable, in carrying through the imperial Parliament the measures required for enabling the naturalization treaty to be concluded; the two treaties having been in the first instance included in the same negotiation under the protocol of the 10th of November, 1868, upon which the treaty of the 14th of January, 1869, was framed.

The naturalization treaty having been ratified some months ago, Her Majesty's government trust that the Government of the United States will no longer hesitate to act upon the water-boundary treaty, which should in that case be appended to and form a part of the general treaty for the mode of settlement of all outstanding differences which you are empowered to sign.

Should, however, a form of arbitration admitting of more free discussion be preferred, Her Majesty's government would assent to such a proposal.

7. The claims of British subjects.

Throughout the negotiations on the Alabama, Shenandoah, &c., claims, Her Majesty's government have always urged that any satisfactory settlement of those claims must be accompanied by a simultaneous settlement of the claims of British subjects *arising out of the civil
[4] war, and provision was made for this purpose in the claims convention.

[1] See North America, No. 1, (1869,) page 44.

Her Majesty's government would expect that the Government of the United States would readily consent to all claims of British subjects against the United States, or of United States citizens against Great Britain, being referred to a mixed commission, formed of one commissioner for each country and an umpire, as was done under the convention of the 8th of February, 1853.

8. THE CLAIMS OF THE PEOPLE OF CANADA ON ACCOUNT OF THE FENIAN RAIDS.

In connection with the claims of British subjects there is a claim on the part of the people of the Dominion of Canada for losses in life and property and expenditure, occasioned by the filibustering raids on the Canadian frontier, carried on from the territory of the United States in the years 1866 and 1870.

The government of the Dominion having solicited Her Majesty's government to bring this claim before the Government of the United States, were requested some time ago to prepare a statement to be submitted to that Government, but it has not yet been received.

In the meanwhile the accompanying account of the Fenian Brotherhood, which has been drawn up by Lord Tenterden, will supply you with full information as to the encouragement and support rendered in the United States to this and other Irish-American revolutionary societies.

9. REVISION OF RULES OF MARITIME NEUTRALITY.

It would be desirable to take this opportunity to consider whether it might not be the interest of both Great Britain and the United States to lay down certain rules of international comity in regard to the obligations of maritime neutrality, not only to be acknowledged for observance in their future relations, but to be recommended for adoption to the other maritime powers.

I have thus touched briefly upon the subjects likely principally to engage your attention, and have indicated the manner in which they may be possibly treated; but Her Majesty's government wish you to understand that you are not thereby precluded from entertaining the consideration of other questions or making any suggestions you may think proper for their settlement.

Her Majesty's government request, however, that if the mode of dealing with any particular matter which you may be disposed to agree to should vary materially from the manner of settlement to which I have informed you Her Majesty's government are prepared at once to assent, or, in case of any disagreement of importance occurring between yourselves and the American high commissioners, you should at once report by telegraph, and await further instructions.

I am, &c.,
(Signed) GRANVILLE.

No. 2.

Earl Granville to Her Majesty's high commissioners.

FOREIGN OFFICE, *February* 9, 1871.

MY LORD AND GENTLEMEN: With reference to my other dispatch of this day's date, in which I have adverted to the revision of the rules of

maritime neutrality as being one of the subjects which will probably be presented for your consideration, I have to state to you that the extent to which a neutral country may be hereafter held justly liable for the dispatch, after notice, of a vessel under similar circumstances to those in the case of the Alabama cannot be precisely defined in the present stage of the controversy; but there are other points in which it may be convenient to you to be informed beforehand that this government are willing to enter into an agreement.

These are:

That no vessel employed in the military or naval service of any belligerent which shall have been equipped, fitted out, armed, or dispatched contrary to the neutrality of neutral state, should be admitted into any port of that state.

That prizes captured by such vessels, or otherwise captured in
[5] violation of the *neutrality of any state, should, if brought within the jurisdiction of that state, be restored.

That, in time of war, no vessel should be recognized as a ship of war, or received in any port of a neutral state as a ship of war, which has not been commissioned in some port in the actual occupation of the government by whom her commission is issued.

The first of these rules has been incorporated into the foreign-enlistment act passed during the last year, and both the first and second were included in the report of the royal commission for inquiring into the neutrality laws.

I am, &c.,
(Signed) GRANVILLE.

No. 3.

Earl Granville to the lord high commissioners.

FOREIGN OFFICE, *February* 9, 1871.

MY LORD AND GENTLEMEN: I have to inform you that Lord Tenterden has been appointed secretary of the high commission, and will proceed to Washington accordingly.

I am, &c.,
(Signed) GRANVILLE.

No. 4.

PROTOCOLS OF CONFERENCES BETWEEN THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN AND THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA.

First protocol of conference between the high commissioners on the part of Great Britain and the high commissioners on the part of the United States of America.

WASHINGTON, *February* 27, 1871.

The high commissioners having met, their full powers were respectively produced, which were found satisfactory, and copies thereof exchanged, as follows:

VICTORIA R.

Victoria, by the grace of God, Queen of the United Kingdom of Great Britain and

Ireland, Defender of the Faith, &c., &c., &c., to all and singular to whom these presents shall come, greeting:

Whereas, for the purpose of discussing in a friendly spirit, with commissioners to be appointed on the part of our good friends the United States of America, the various questions on which differences have arisen between us and our said good friends, and of treating for an agreement as to the mode of their amicable settlement, we have judged it expedient to invest fit persons with full power to conduct on our part the discussion in this behalf:

Know ye, therefore, that we, reposing especial trust and confidence in the wisdom, loyalty, diligence, and circumspection of our right trusty and right well-beloved cousin and councilor, George Frederick Samuel, Earl de Grey and Ripon, Viscount Goderich, a peer of our United Kingdom, president of our most honorable privy council, knight of our most noble Order of the Garter, &c., &c., of our right trusty and well-beloved councilor Sir Stafford Henry Northcote, baronet, a member of Parliament, companion of our most honorable Order of the Bath, &c., &c.; of our trusty and well-beloved Sir Edward Thornton, knight commander of our most honorable Order of the Bath, our envoy extraordinary and minister plenipotentiary to our good friends the United States of America, &c., &c.; of our trusty and well-beloved Sir John Alexander Macdonald, knight commander of our most honorable Order of the Bath, a member of our privy council for Canada, and minister of justice and attorney-general in our Dominion of Canada, &c., &c.; and of our trusty and well-beloved Montague Bernard, esquire, Chichele professor of international law in the University of Oxford; have named, made, constituted, and appointed, as we do by these presents name, make, constitute, and appoint them our undoubted high commissioners, procurators, and plenipotentiaries, giving to them, or to any three or more of them, all manner of power and authority to treat, adjust, and conclude with such minister or ministers as may be vested with similar power and authority on the part of our good friends the United States of America, any treaties, conventions, or agreements that may tend to the attainment of the above-mentioned end, and to sign for us and in our name everything so agreed upon and concluded, and to do and transact all such other mat-

[6] ters as may appertain to the "finishing of the aforesaid work in as ample manner and form, and with equal force and efficacy, as we ourselves could do if personally present, engaging and promising upon our royal word that whatever things shall be so transacted and concluded by our said high commissioners, procurators, and plenipotentiaries, shall be agreed to, acknowledged, and accepted by us in the fullest manner, and that we will never suffer, either in the whole or in part, any person whatsoever to infringe the same, or act contrary thereto, as far as it lies in our power.

In witness whereof we have caused the great seal of our United Kingdom of Great Britain and Ireland to be affixed to these presents, which we have signed with our royal hand.

Given at our court at Windsor Castle the 16th day of February, in the year of our Lord one thousand eight hundred and seventy-one, and in the thirty-fourth year of our reign.

Ulysses S. Grant, President of the United States of America, to all who shall see these presents, greeting:

Know ye that, reposing special trust and confidence in the integrity and ability of Hamilton Fish, Secretary of State, Robert C. Schenck, envoy extraordinary and minister plenipotentiary to Great Britain, Samuel Nelson, an associate justice of the Supreme Court of the United States, Ebenezer R. Hoar, of Massachusetts, and George H. Williams, of Oregon, I have nominated and, by and with the advice and consent of the Senate, do appoint them jointly and severally to be commissioners on the part of the United States, in a joint high commission between the United States and Great Britain, hereby empowering them jointly and severally to meet the commissioners appointed or to be appointed on behalf of Her Britannic Majesty, and with them to treat and discuss the mode of settlement of the different questions which shall come before the said joint high commission, and the said office to hold and exercise during the pleasure of the President of the United States for the time being.

In testimony whereof I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand at the city of Washington this 10th day of February, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States of America the ninety-fifth.

[seal.] (Signed) U. S. GRANT.

By the President:

(Signed) HAMILTON FISH, *Secretary of State.*

It was proposed by the British high commissioner that Mr. Fish, Secretary of State of the United States, should preside.

The United States commissioners stated that, although appreciating the proposal, they did not consider it necessary that a president should be named.

The high commissioners, on the suggestion of Mr. Fish, requested that Lord Tenterden, secretary of the British high commission, and Mr. Bancroft Davis, Assistant Secretary of State of the United States, acting as secretary to the United States high commission, to undertake the duties of joint protocolists.

The high commissioners then agreed that the subjects for discussion should be those mentioned in the following correspondence which has taken place between the two governments:

1. *Sir E. Thornton to Mr. Fish, January* 26, 1871.
[See "North America, No. 1, (1871)" inclosure 1 in No. 1.]

2. *Mr. Fish to Sir E. Thornton, January* 30, 1871.
[*Ibid.*, inclosure 2 in No. 1.]

3. *Sir E. Thornton to Mr. Fish, February* 1, 1871.
[*Ibid.*, inclosure 3 in No. 1.]

4. *Mr. Fish to Sir E. Thornton, February* 3, 1871.
[*Ibid.*, inclosure 4 in No. 1.]

[7] The commissioners further determined that the discussion might include such other matters as might be mutually agreed upon.

The meeting of the high commissioners was then adjourned to the 4th of March.

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

Second protocol of conference between the high commissioners on the part of Great Britain and the high commissioners on the part of the United States of America.

WASHINGTON, *March* 4, 1871.

The high commissioners having met, the protocol of the conference held on the 27th of February was read and confirmed.

At the commencement of the conference the United States high commissioners called attention to the provision in the Constitution of the United States by which the advice and consent of the Senate is required for the ratification of any treaty which may be signed under the authority of the President.

The British high commissioners stated that they were acquainted with this provision.

The high commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 6th of March.

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

Third protocol of conference between the high commissioners on the part of Great Britain and the high commissioners on the part of the United States of America.

WASHINGTON, *March* 6, 1871.

The commissioners having met, the protocol of the conference held on the 4th of March was read and confirmed.

The high commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 8th of March.

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

[The subsequent protocols to No. XXXIV are to the same effect as protocol No. III.]

Thirty-fifth protocol of conference between the high commissioners on the part of Great Britain and the high commissioners on the part of the United States of America.

WASHINGTON, *May* 3, 1871.

The high commissioners having met, the protocol of the conference held on the 25th of April was read and confirmed.

The high commissioners then proceeded with the consideration of the matters referred to them.

The American commissioners produced the following further full-power, under the seal of the United States, authorizing them to conclude and sign a treaty:

ULYSSES S. GRANT, President of the United States of America, to all to whom these presents shall come, greeting:

Know ye that whereas by my power bearing date the 10th day of February last, Hamilton Fish, Secretary of State, Robert C. Schenck, envoy extraordinary and minister plenipotentiary to Great Britain, Samuel Nelson, an associate justice of the Supreme Court of the United States, Ebenezer R. Hoar, of Massachusetts, and George H. Williams, of Oregon, were authorized to meet the commissioners appointed, or to be appointed, on behalf of Her Britannic Majesty, and with them to treat and discuss the mode of settlement of the different questions which should come before them;

And whereas that meeting and discussion have taken place, and the said mode of settlement has been agreed upon:

Now, therefore, I, Ulysses S. Grant, President of the United States, do hereby appoint the said Hamilton Fish, Robert C. Schenck, Samuel Nelson, Ebenezer R. Hoar, and George H. Williams, jointly and severally, plenipotentiaries for and in behalf of the United States, and do authorize them, and any or either of them, to conclude and sign any treaty or treaties touching the premises, for the final ratification of the
[8] President of *the United States, by and with the advice and consent of the Senate, if such advice and consent be given.

In witness whereof I have caused the seal of the United States to be hereunto affixed.

Given under my hand at the city of Washington, the second day of May, in the year of our Lord one thousand eight hundred and seventy-one, and of the independence of the United States of America the ninety-fifth.

(Signed) U. S. GRANT.

By the President:

(Signed) HAMILTON FISH, *Secretary of State.*

This full power was examined by the British commissioners and found satisfactory.

The joint high commissioners determined that they would embody in a protocol a statement containing an account of the negotiations upon the various subjects included in the treaty, and they instructed the joint protocolists to prepare such an account in the order in which the subjects are to stand in the treaty.

The conference was adjourned to the 4th of May.

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

Thirty-sixth protocol of conference between the high commissioners on the part of Great Britain and the high commissioners on the part of the United States of America.

WASHINGTON, *May* 4, 1871.

The high commissioners having met, the protocol of the conference held on the 3d of May was read and confirmed.

The high commissioners then proceeded with the consideration of the matters referred to them.

The statement prepared by the joint protocolists, in accordance with the request of the joint high commissioners at the last conference, was then read as follows:

STATEMENT.

ARTICLES I TO XI.

At the conference held on the 8th of March, the American commissioners stated that the people and Government of the United States felt that they had sustained a great wrong, and that great injuries and losses were inflicted upon their commerce and their material interests by the course and conduct of Great Britain during the recent rebellion in the United States; that what had occurred in Great Britain and her colonies during that period had given rise to feelings in the United States which the people of the United States did not desire to cherish toward Great Britain; that the history of the Alabama and other cruisers which had been fitted out, or armed, or equipped, or which had received augmentation of force in Great Britain or in her colonies, and of the operations of those vessels, showed extensive direct losses in the capture and destruction of a large number of vessels with their cargoes, and in the heavy national expenditures in the pursuit of the cruisers, and indirect injury in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war and the suppression of the rebellion; and also showed that Great Britain by reason of failure in the proper observance of her duties as a neutral had become justly liable for the acts of those cruisers and of their tenders; that the claims for the loss and destruction of private property which had thus far been presented amounted to about fourteen millions of dollars, without interest, which amount was liable to be greatly increased by claims which had not been presented; that the cost to which the Government had been put in pursuit of cruisers could easily be ascertained by certificates of Government accounting officers; that in the

hope of an amicable settlement no estimate was made of the indirect losses, without prejudice, however, to the right of indemnification on their account in the event of no such settlement being made.

The American commissioners further stated that they hoped that the British commissioners would be able to place upon record an expression of regret by Her Majesty's government for the depredations committed by the vessels whose acts were now under discussion. They also proposed that the joint high commission should agree upon a sum which should be paid by Great Britain to the United States, in satisfaction of all the claims and the interest thereon.

The British commissioners replied that Her Majesty's government could not admit that Great Britain had failed to discharge toward
[9] the United States the duties imposed on *her by the rules of international law, or that she was justly liable to make good to the United States the losses occassioned by the acts of the cruisers to which the American commissioners had referred. They reminded the American commissioners that several vessels, suspected of being designed to cruise against the United States, including two iron-clads, had been arrested or detained by the British government, and that that government had in some instances not confined itself to the discharge of international obligations, however widely construed; as, for instance, when it acquired at a great cost to the country the control of the Anglo-Chinese flotilla, which, it was apprehended, might be used against the United States.

They added that although Great Britain had, from the beginning, disavowed any responsibility for the acts of the Alabama and the other vessels, she had already shown her willingness, for the sake of the maintenance of friendly relations with the United States, to adopt the principle of arbitration, providing that a fitting arbitrator could be found, and that an agreement could be come to as to the points to which arbitration should apply. They would, therefore, abstain from replying in detail to the statement of the American commissioners, in the hope that the necessity for entering upon a lengthened controversy might be obviated by the adoption of so fair a mode of settlement as that which they were instructed to propose; and they had now to repeat, on behalf of their government, the offer of arbitration.

The American commissioners expressed their regret at this decision of the British commissioners, and said further that they could not consent to submit the question of the liability of Her Majesty's government to arbitration unless the principles which should govern the arbitrator in the consideration of the facts could be first agreed upon.

The British commissioners replied that they had no authority to agree to a submission of these claims to an arbitrator with instruction as to the principles which should govern him in the consideration of them. They said that they should be willing to consider what principles should be adopted for observance in future; but that they were of opinion that the best mode of conducting an arbitration was to submit the facts to an arbitrator, and leave him free to decide upon them after hearing such arguments as might be necessary.

The American commissioners replied that they were willing to consider what principles should be laid down for observance in similar cases in future, with the understanding that any principles which should be agreed upon should be held to be applicable to the facts in respect to the Alabama claims.

The British commissioners replied that they could not admit that there had been any violation of existing principles of international law,

and that their instructions did not authorize them to accede to a proposal for laying down rules for the guidance of the arbitrator, but that they would make known to their government the views of the American commissioners on the subject.

At the respective conferences on March 9, March 10, March 13, and March 14, the joint high commission considered the form of the declaration of principles or rules which the American commissioners desired to see adopted for the instruction of the arbitrator, and laid down for observance by the two governments in future.

At the close of the conference of the 14th of March the British commissioners reserved several questions for the consideration of their government.

At the conference on the 5th of April the British commissioners stated that they were instructed by Her Majesty's government to declare that Her Majesty's government could not assent to the proposed rules as a statement of principles of international law which were in force at the time when the Alabama claims arose, but that Her Majesty's government, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, agreed that in deciding the questions between the two countries arising out of those claims, the arbitrator should assume that Her Majesty's government had undertaken to act upon the principles set forth in the rules which the American commissioners had proposed, viz:

That a neutral government is bound, first, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or carry on war against a power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

Secondly. Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly. To exercise due diligence in its own ports or waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

[10] *It being a condition of this undertaking that these obligations should in future be held to be binding internationally between the two countries.

It was also settled that in deciding the matters submitted to him, the arbitrator should be governed by the foregoing rules, which had been agreed upon as rules to be taken as applicable to the case, and by such principles of international law, not inconsistent therewith, as the arbitrator should determine to have been applicable to the case.

The joint high commission then proceeded to consider the form of submission and the manner of constituting a tribunal of arbitration.

At the conferences on the 6th, 8th, 9th, 10th, and 12th of April, the joint high commission considered and discussed the form of submission, the manner of the award, and the mode of selecting the arbitrators.

The American commissioners, referring to the hope which they had expressed on the 8th March, inquired whether the British commissioners were prepared to place upon record an expression of regret by Her Majesty's government for the depredations committed by the vessels

whose acts were now under discussion; and the British commissioners replied that they were authorized to express, in a friendly spirit, the regret felt by Her Majesty's government for the escape, under whatever circumstances, of the Alabama and other vessels from British ports, and for the depredations committed by those vessels.

The American commissioners accepted this expression of regret as very satisfactory to them and as a token of kindness, and said that they felt sure it would be so received by the Government and people of the United States.

In the conference on the 13th April, the treaty articles I to XI were agreed to.

Articles XII to XVII.

At the conference on the 4th March it was agreed to consider the subjects referred to the joint high commission by the respective governments in the order in which they appear in the correspondence between Sir Edward Thornton and Mr. Fish, and to defer the consideration of the adjustment of "all other claims, both of British subjects and citizens of the United States, arising out of acts committed during the recent civil war in this country," as described by Sir Edward Thornton in his letter of February 1, until the subjects reported to in the previous letters should have been disposed of.

The American commissioners said that they supposed that they were right in their opinion that British laws prohibit British subjects from owning slaves; they therefore inquired whether any claim for slaves, or for alleged property or interest in slaves, can or will be presented by the British government, or in behalf of any British subject, under the treaty now being negotiated, if there be in the treaty no express words excluding such claims.

The British commissioners replied, that by the law of England British subjects had long been prohibited from purchasing or dealing in slaves, not only within the dominions of the British Crown, but in any foreign country; and that they had no hesitation in saying that no claim on behalf of any British subject for slaves, or for any property or interest in slaves, would be presented by the British government.

Referring to the paragraph in Sir Edward Thornton's letter of January 26, relating to "the mode of settling the different questions which have arisen out of the fisheries, as well as all those which affect the relations of the United States toward Her Majesty's possessions in North America," the British commissioners proposed that the joint high commission should consider the claims for injuries which the people of Canada had suffered from what were known as the "Fenian raids."

The American commissioners objected to this, and it was agreed that the subject might be brought up again by the British commissioners in connection with the subjects referred to by Sir Edward Thornton in his letter of February 1.

At the conference on the 14th of April the joint high commission took into consideration the subjects mentioned by Sir Edward Thornton in that letter.

The British commissioners proposed that a commission for the consideration of these claims should be appointed, and that the convention of 1853 should be followed as a precedent. This was agreed to, except that it was settled that there should be a third commissioner instead of an umpire.

At the conference on the 15th of April, the treaty articles XII to XVII were agreed to.

At the conference on the 26th of April the British commissioners again brought before the joint high commission the claims of
[11] the people of Canada for injuries suffered *from the Fenian raids. They said that they were instructed to present these claims, and to state that they were regarded by Her Majesty's government as coming within the class of subjects indicated by Sir Edward Thornton in his letter of January 26, as subjects for the consideration of the joint high commission.

The American commissioners replied that they were instructed to say that the Government of the United States did not regard these claims as coming within the class of subjects indicated in that letter as subjects for the consideration of the joint high commission, and that they were without any authority from their Government to consider them. They therefore declined to do so.

The British commissioners stated that, as the subject was understood not to be within the scope of the instructions of the American commissioners, they must refer to their government for further instructions upon it.

At the conference on the 3d May the British commissioners stated that they were instructed by their government to express their regret that the American commissioners were without authority to deal with the question of the Fenian raids, and they inquired whether that was still the case.

The American commissioners replied that they could see no reason to vary the reply formerly given to this proposal; that, in their view, the subject was not embraced in the scope of the correspondence between Sir Edward Thornton and Mr. Fish under either of the letters of the former; and that they did not feel justified in entering upon the consideration of any class of claims not contemplated at the time of the creation of the present commission, and that the claims now referred to did not commend themselves to their favor.

The British high commissioners said that, under these circumstances, they would not urge further that the settlement of these claims should be included in the present treaty, and that they had the less difficulty in doing so, as a portion of the claims were of a constructive and inferential character.

Articles XVIII to XXV.

At the conference on the 6th of March the British commissioners stated that they were prepared to discuss the question of the fisheries, either in detail or generally, so as either to enter into an examination of the respective rights of the two countries under the treaty of 1818, and the general law of nations, or to approach at once the settlement of the question on a comprehensive basis.

The American commissioners said that, with a view of avoiding the discussion of matters which subsequent negotiation might render it unnecessary to enter into, they thought it would be preferable to adopt the latter course, and inquired what, in that case, would be the basis which the British commissioners desired to propose.

The British commissioners replied that they considered that the reciprocity treaty of 5th June, 1834, should be restored in principle.

The American commissioners declined to assent to a renewal of the former reciprocity treaty.

The British commissioners then suggested that, if any considerable modification were made in the tariff arrangements of that treaty, the coasting trade of the United States and of Her Britannic Majesty's possessions in North America should be reciprocally thrown open, and that the navigation of the river St. Lawrence and of the Canadian canals should be also thrown open to the citizens of the United States on terms of equality with British subjects.

The American commissioners declined this proposal, and objected to a negotiation on the basis of the reciprocity treaty. They said that that treaty had proved unsatisfactory to the people of the United States, and consequently had been terminated by notice from the Government of the United States, in pursuance of its provisions. Its renewal was not in their interest, and would not be in accordance with the sentiments of their people. They further said that they were not at liberty to treat of the opening of the coasting trade of the United States to the subjects of Her Majesty residing in her possessions in North America. It was agreed that the questions relating to the navigation of the river St. Lawrence and of the Canadian canals, and to other commercial questions affecting Canada, should be treated by themselves.

The subject of the fisheries was further discussed at the conferences of the 7th, 20th, 22d, and 25th of March. The American commissioners stated that, if the value of the in-shore fisheries could be ascertained, the United States might prefer to purchase, for a sum of money, the right to enjoy, in perpetuity, the use of these in-shore fisheries in common with British fishermen, and mentioned $1,000,000 as the sum they
[12] were *prepared to offer. The British commissioners replied that this offer was, they thought, wholly inadequate, and that no arrangement would be acceptable of which the admission into the United States, free of duty, of fish the produce of the British fisheries did not form a part, adding that any arrangement for the acquisition by purchase of the in-shore fisheries in perpetuity was open to grave objection.

The American commissioners inquired whether it would be necessary to refer any arrangement for purchase to the colonial or provincial parliaments.

The British commissioners explained that the fisheries within the limits of maritime jurisdiction were the property of the several British colonies, and that it would be necessary to refer any arrangement which might affect colonial property or rights to the colonial or provincial parliaments; and that legislation would also be required on the part of the imperial Parliament. During these discussions the British commissioners contended that these in-shore fisheries were of great value, and that the most satisfactory arrangement for their use would be a reciprocal tariff arrangement and reciprocity in the coasting trade; and the American commissioners replied that their value was overestimated; that the United States desired to secure their enjoyment, not for their commercial or intrinsic value, but for the purpose of removing a source of irritation, and that they could hold out no hope that the Congress of the United States would give its consent to such a tariff arrangement as was proposed, or to any extended plan of reciprocal free admission of the products of the two countries; but that, inasmuch as one branch of Congress had recently, more than once, expressed itself in favor of the abolition of duties on coal and salt, they would propose that coal, salt, and fish be reciprocally admitted free; and that, inasmuch as Congress had removed the duty from a portion of the lumber heretofore subject to duty, and as the tendency of legislation in

the United States was toward the reduction of taxation and of duties in proportion to the reduction of the public debt and expenses, they would further propose that lumber be admitted free from duty from and after the 1st of July, 1874, subject to the approval of Congress, which was necessary on all questions affecting import duties.

The British commissioners, at the conference on the 17th of April, stated that they had referred this offer to their government, and were instructed to inform the American commissioners that it was regarded as inadequate, and that Her Majesty's government considered that free lumber should be granted at once, and that the proposed tariff concessions should be supplemented by a money payment.

The American commissioners then stated that they withdrew the proposal which they had previously made of the reciprocal free admission of coal, salt, and fish, and of lumber after July 1, 1874; that that proposal had been made entirely in the interest of a peaceful settlement, and for the purpose of removing a source of irritation and of anxiety; that its value had been beyond the commercial or intrinsic value of the rights to have been acquired in return; and that they could not consent to an arrangement on the basis now proposed by the British commissioners; and they renewed their proposal to pay a money equivalent for the use of the in-shore fisheries. They further proposed that, in case the two governments should not be able to agree upon the sum to be paid as such an equivalent, the matter should be referred to an impartial commission for determination.

The British commissioners replied that this proposal was one on which they had no instructions, and that it would not be possible for them to come to any arrangement except one for a term of years, and involving the concession of free fish and fish-oil by the American commissioners; but that if free fish and fish-oil were conceded, they would inquire of their government whether they were prepared to assent to a reference to arbitration as to money payment.

The American commissioners replied that they were willing, subject to the action of Congress, to concede free fish and fish-oil as an equivalent for the use of the in-shore fisheries, and to make the arrangement for a term of years; that they were of opinion that free fish and fish-oil would be more than an equivalent for those fisheries, but that they were also willing to agree to a reference to determine that question and the amount of any money payment that might be found necessary to complete an equivalent, it being understood that legislation would be needed before any payment could be made.

The subject was further discussed in the conferences of April 18 and 19, and the British commissioners having referred the last proposal to their government, and received instructions to accept it, the treaty articles XVIII to XXV were agreed to at the conference on the 22d April.

Articles XXVI to XXXIII.

At the conference on the 6th of March the British commis-
[13] sioners proposed that the *reciprocity treaty of June 5, 1854, should be restored in principle, and that, if any considerable modifications in the tariff arrangements in force under it were made, the coasting trade of the United States and of Her Britannic Majesty's possessions in North America should be reciprocally thrown open, and that the navigation of the river St. Lawrence and of the Canadian canals should be thrown open to the citizens of the United States on terms of equality with British subjects.

The American commissioners declined this proposal, and in the subsequent negotiations the question of the fisheries was treated by itself.

At the conference on the 17th March the joint high commission considered the subject of the American improvement of the navigation of the St. Clair Flats.

At the conference on the 18th March the questions of the navigation of the river St. Lawrence and the canals and the other subjects connected therewith were taken up.

The American commissioners proposed to take into consideration the question of transit of goods in bond through Canada and the United States, which was agreed to.

The British commissioners proposed to take into consideration the question of opening the coasting trade of the lakes reciprocally to each party, which was declined.

On the proposal of the British commissioners, it was agreed to take the question of transshipment into consideration.

The British commissioners proposed to take into consideration the reciprocal registration of vessels, as between the Dominion of Canada and the United States, which was declined.

At the conference on the 23d March the transshipment question was discussed, and postponed for further information, on the motion of the American commissioners.

The transit question was discussed, and it was agreed that any settlement that might be made should include a reciprocal arrangement in that respect for the period for which the fishery articles should be in force.

The question of the navigation of the river St. Lawrence and the canals was taken up.

The British commissioners stated that they regarded the concession of the navigation of Lake Michigan as an equivalent for the concession of the navigation of the river St. Lawrence.

As to the canals, they stated that the concession of the privilege to navigate them in their present condition, on terms of equality with British subjects, was a much greater concession than the corresponding use of the canals offered by the United States.

They further said that the enlargement of the canals would involve the expenditure of a large amount of money, and they asked what equivalent the American commissioners proposed to give for the surrender of the right to control the tolls for the use of the canals, either in their present state or after enlargement.

The American commissioners replied that, unless the Welland Canal should be enlarged so as to accommodate the present course of trade, they should not be disposed to make any concessions; that, in their opinion, the citizens of the United States could now justly claim to navigate the river St. Lawrence in its natural state, ascending and descending, from the forty-fifth parallel of north latitude, where it ceases to form the boundary between the two countries, from, to, and into the sea; and they could not concede that the navigation of Lake Michigan should be given or taken as an equivalent for that right; and they thought that the concession of the navigation of Lake Michigan and of the canals offered by them was more than an equivalent for the concessions as to the Canadian canals which were asked. They proposed, in connection with a reciprocal arrangement as to transit and transshipment, that Canada should agree to enlarge the Welland and St. Lawrence Canals, to make no discriminating tolls, and to limit the tolls to rates sufficient to maintain the canals, pay a reasonable interest on the cost of con-

struction and enlargement, and raise a sinking-fund for the repaying, within a reasonable time, the cost of enlargement; and that the navigation of the river St. Lawrence, the Canadian canals, the canals offered by the United States, and Lake Michigan should be enjoyed reciprocally by citizens of the United States and by British subjects. This proposal was declined by the British commissioners, who repeated that they did not regard the equivalent offered by the United States as at all commensurate with the concessions asked from Great Britain.

At the conference on the 27th of March the proposed enlargement of the Canadian canals was further discussed. It was stated on the part of the British commissioners that the Canadian government were now considering the expediency of enlarging the capacity of the canals on the river St. Lawrence, and had already provided for the enlargement of the Welland Canal, which would be undertaken without delay.

The subject of the export duty in New Brunswick on American lumber floated down the river St. John was proposed for consideration by the American commissioners.

[14] *At the conference on the 22d of April the British commissioners proposed that the navigation of Lake Michigan should be given in exchange for the navigation of the river St. Lawrence, and that Her Majesty's government should agree to urge upon the Dominion of Canada to give to the citizens of the United States the use of the Canadian canals on terms of equality with British subjects, and that the Government of the United States should agree to urge upon the several States to give to British subjects the use of the several State canals on terms of equality with citizens of the United States. They also proposed, as part of the arrangement, a reciprocal agreement as to transit and transshipment, and that the government of Great Britain should urge upon New Brunswick not to impose export duties on the lumber floated down the river St. John for shipment to the United States.

The American commissioners repeated their views as to the navigation of the river St. Lawrence in its natural state.

The British commissioners replied that they could not admit the claims of American citizens to navigate the river St. Lawrence as of right; but that the British government had no desire to exclude them from it. They, however, pointed out that there were certain rivers running through Alaska which should on like grounds be declared free and open to British subjects, in case the river St. Lawrence should be declared free.

The American commissioners replied that they were prepared to consider that question. They also assented to the arrangement as to the canals which was proposed by the British commissioners, limiting it, as regarded American canals, to the canals connected with the navigation of the lakes or rivers traversed by or contiguous to the boundary line between the British and American possessions. They likewise agreed to give the right of navigating Lake Michigan for a term of years. They desired, and it was agreed, that the transshipment arrangement should be made dependent upon the non-existence of discriminating tolls or regulations on the Canadian canals, and also upon the abolition of the New Brunswick export duty on American lumber intended for the United States. It was also agreed that the right of carrying should be made dependent upon the non-imposition of export duties on either side on the goods of the other party passing in transit.

The discussion of these subjects was further continued at the conferences of the 24th, 25th, and 26th of April, and the Treaty Articles XXVI to XXXIII were agreed to at the conference on the 3d of May.

In the course of these discussions the British commissioners called attention to the question of the survey of the boundary line along the forty-ninth parallel, which still remained unexecuted from the Lake of the Woods to the Rocky Mountains, and to which reference had been made in the President's message.

The American commissioners stated that the survey was a matter for administrative action, and did not require to be dealt with by a treaty provision. The United States Government would be prepared to agree with the British government for the appointment of a boundary survey commission, in the same manner as had been done in regard to the remainder of the boundary along the forty-ninth parallel, as soon as the legislative appropriations and other necessary arrangements could be made.

Articles XXXIV to XLII.

At the conference on the 15th of March the British commissioners stated that it was proposed that day to take up the northwest water-boundary question; that the differene was one of long standing, which had more than once been the subject of negotiations between the two governments, and that the negotiators had, in January, 1869, agreed upon a treaty. They then proposed that an arbitration of this question should be made upon the basis of the provisions of that treaty.

The American commissioners replied that, though no formal vote was actually taken upon it, it was well understood that that treaty had not been favorably regarded by the Senate. They declined the proposal of the British commissioners, and expressed their wish that an effort should be made to settle the question in the joint high commission.

The British commissioners assented to this, and presented the reasons which induced them to regard the Rosario Straits as the channel contemplated by the treaty of June 15, 1846.

The American commissioners replied, and presented the reasons which induced them to regard the Haro Channel as the channel contemplated by that treaty. They also produced, in support of their views, some original correspondence of Mr. Everett with his Government, which had not been alluded to in previous discussions of the question.

[15] The British commissioners replied that they saw in that correspondence no reason to *induce them to change the opinion which they had previously expressed. They then asked whether the American commissioners had any further proposal to make.

The American commissioners replied that, in view of the position taken by the British commissioners, it appeared that the treaty of June 15, 1846, might have been made under a mutual misunderstanding, and would not have been made had each party understood at that time the construction which the other party puts upon the language whose interpretation is in dispute; they therefore proposed to abrogate the whole of that part of the treaty, and rearrange the boundary-line which was in dispute before that treaty was concluded.

The British commissioners replied that the proposal to abrogate a treaty was one of a serious character, and that they had no instructions which would enable them to entertain it; and at the conference on the 20th March the British commissioners declined the proposal.

At the conference on the 19th of April the British commissioners proposed to the American commissioners to adopt the Middle Channel (generally known as the Douglas Channel) as the channel through which the boundary-line should be run, with the understanding that all the

channels through the archipelago should be free and common to both parties.

The American commissioners declined to entertain that proposal. They proposed that the joint high commission should recognize the Haro Channel as the channel intended by the treaty of June 15, 1846, with a mutual agreement that no fortifications should be erected by either party to obstruct or command it, and with proper provisions as to any existing proprietary rights of British subjects in the island of San Juan.

The British commissioners declined this proposal, and stated that, being convinced of the justice of their view of the treaty, they could not abandon it except after a fair decision by an impartial arbitrator. They therefore renewed their proposal for a reference to arbitration, and hoped that it would be seriously considered.

The American commissioners replied that they had hoped that their last proposal would be accepted. As it had been declined, they would, should the other questions between the two governments be satisfactorily adjusted, agree to a reference to arbitration, to determine whether the line should run through the Haro Channel or through the Rosario Straits, upon the condition that either government should have the right to include in the evidence to be considered by the arbitrator such documents, official correspondence, and other official or public statements bearing on the subject of the reference as they may consider necessary to the support of their respective cases. This condition was agreed to.

The British commissioners proposed that the arbitrator should have the right to draw the boundary through an intermediate channel. The American commissioners declined this proposal, stating that they desired a decision, not a compromise.

The British commissioners proposed that it should be declared to be the proper construction of the treaty of 1846 that all the channels were to be open to navigation by both parties. The American commissioners stated that they did not so construe the treaty of 1846, and therefore could not assent to such a declaration.

The discussion of this subject was continued during this conference, and in the conference of the 22d of April the treaty articles XXXIV to XLII were agreed to.

The joint high commissioners approved this statement, and directed it to be entered in the protocol.

The conference was adjourned to the 6th of May.

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

Thirty-seventh protocol of conference between the high commissioners on the part of Great Britain and the high commissioners on the part of the United States of America.

WASHINGTON, *May* 6, 1871.

The high commissioners having met, the protocol of the conference held on the 4th of May was read and confirmed.

Lord de Grey said that, as the joint high commissioners would not meet again after to-day, except for the purpose of signing the treaty, he desired, on behalf of himself and his colleagues, to express their high appreciation of the manner in which Mr. Fish and his American

colleagues had, on their side, conducted the negotiations. It had
[16] been most *gratifying to the British commissioners to be associated with colleagues who were animated with the same sincere desire as themselves to bring about a settlement, equally honorable and just to both countries, of the various questions of which it had been their duty to treat, and the British commissioners would always retain a grateful recollection of the fair and friendly spirit which the American commissioners had displayed.

Mr. Fish, in behalf of the American commissioners, said that they were gratefully sensible of the friendly words expressed by Lord de Grey, and of the kind spirit which had prompted them. From the date of the first conference the American commissioners had been impressed with the earnestness of desire manifested by the British commissioners to reach a settlement worthy of the two powers who had committed to this joint high commission the treatment of various questions of peculiar interest, complexity, and delicacy. His colleagues and he could never cease to appreciate the generous spirit and the open and friendly manner in which the British commissioners had met and discussed the several questions that had led to the conclusion of a treaty which it was hoped would receive the approval of the people of both countries, and would prove the foundation of a cordial and friendly understanding between them for all time to come.

Mr. Fish further said that he was sure that every member of the joint high commission would desire to record his appreciation of the ability, the zeal, and the unceasing labor which the joint protocolists had exhibited in the discharge of their arduous and responsible duties, and that he knew that he only gave expression to the feelings of the commissioners in saying that Lord Tenterden and Mr. Bancroft Davis were entitled to, and were requested to accept, the thanks of the joint high commission for their valuable services, and the great assistance which they had rendered with unvarying obligingness to the commission.

Lord de Grey replied, on behalf of the British commissioners, that he and his colleagues most cordially concurred in the proposal made by Mr. Fish that the thanks of the joint high commission should be tendered to Mr. Bancroft Davis and Lord Tenterden for their valuable services as joint protocolists. The British commissioners were also quite as sensible as their American colleagues of the great advantage which the commission had derived from the assistance which those gentlemen had given them in the conduct of the important negotiations in which they had been engaged.

Monday, the 8th of May, was appointed for the signature of the treaty.

(Signed) TENTERDEN.
J. C. BANCROFT DAVIS.

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